

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-6185

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 76-6185

FREDERICK W. SILVERMAN,

Plaintiff-Appellant,

-against-

J. WILLIAM MIDDENDORF, II, SECRETARY  
OF THE NAVY, and COMMANDING OFFICER,  
BUREAU OF MEDICINE AND SURGERY,  
UNITED STATES NAVY,

Defendants-Appellees.

On Appeal from the United States District Court  
for the Southern District of New York

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JOINT APPENDIX

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KUNSTLER & HYMAN  
Attorneys for Plaintiff-  
Appellant  
370 Lexington Avenue  
New York, New York 10017

HON. ROBERT B. FISKE, JR.  
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1 St. Andrew's Plaza  
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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FREDERICK W. SILVERMAN,

Plaintiff-Appellant,

-against-

J. WILLIAM MIDDENDORF, II, SECRETARY  
OF THE NAVY, and COMMANDING OFFICER,  
BUREAU OF MEDICINE AND SURGERY,  
UNITED STATES NAVY,

Defendants-Appellees.

CASE NO. 76 Civ. 6185

JUDGE BONSAL

INDEX TO THE RECORD ON APPEAL

DOCUMENTS

A-B Certified copy of docket entries

- |          |      |  |
|----------|------|--|
| 06-21-76 | (1)  | Filed complaint & issued summons.  |
| 06-21-76 | (2)  | Filed plttf's affidavit & show cause order for preliminary injunction.<br>ret.6-28-76.   |
| 06-29-76 | (3)  | Filed stip & order that plttf's show cause order ret.6-28-76 adj.to<br>7-6-76. Bonsal, J.  |
| 07-07-76 | (4)  | Filed plttf's memorandum in support of motion for preliminary injunction.  |
| 07-09-76 | (5)  | Filed deft's affidavit & notice of motion to dismiss complaint ret.<br>7-12-76.  |
| 07-09-76 | (6)  | Filed deft's memorandum of law in support of his motion ret.7-12-76.   |
| 07-09-76 | (7)  | Filed affidavit of J.E. Corcoran, Jr. Re: Naval records.   |
| 07-09-76 | (8)  | Filed affidavit of D.J. Brideau, as head of Medical deft.  |
| 07-22-76 | (9)  | Filed plttf's reply memorandum in support of his motion for preliminary<br>injunction.   |
| 07-28-76 | (10) | Filed deft's reply memorandum of law.  |
| 07-28-76 | (11) | Filed supplemental affidavit of G.G. Cooper in opposition to plttf's<br>show cause order.  |
| 11-08-76 | 12   | Filed MEMORANDUM -...Accordingly, plttf's motion for injunctive<br>relief is denied and defts' motion to dismiss the complaint is<br>granted. Bonsal, J. m/n |
| 11-11-76 | 13   | Filed judgment, defts have judgment against the plttf dismissing<br>the complaint. Clerk. m/n  |
| 11-22-76 | 14   | Filed notice of appeal by plttf to the U.S.C.A. from the order &<br>opinion dated 11-8-76 and judgment entered 11-11-76. cppy to deft.                       |
|          | 15   | Clerk's Certificate  |



FILE COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FREDERICK W. SILVERMAN,

Plaintiff,

76 Civ. 2708

-against-

J. WILLIAM MIDDENDORF, II,  
SECRETARY OF THE NAVY, and  
COMMANDING OFFICER, BUREAU OF  
MEDICINE AND SURGERY, UNITED  
STATES NAVY,

Defendants.

NOTICE OF APPEAL

to

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that FREDERICK W. SILVERMAN, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the order and opinion of the Honorable Dudley Bonsal, United States District Court Judge, filed November 8, 1976, and judgment entered the 11th day of November 1976, denying plaintiff's motion for injunctive relief and granting defendant's motion to dismiss the complaint, and from each and every part thereof.

KUNSTLER & HYMAN  
Attorneys for Plaintiff

By \_\_\_\_\_  
A Member of the Firm  
370 Lexington Ave.  
New York, N.Y. 10017  
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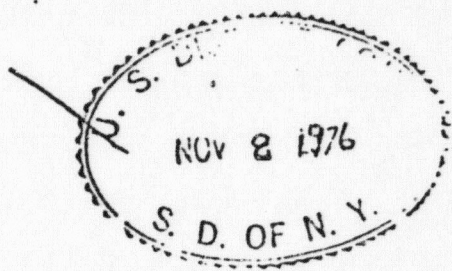
TO:

HON. ROBERT B. FISKE, JR.  
United States Attorney  
Southern District of N.Y.  
Attorney for Defendants  
1 St. Andrews Plaza  
New York, N.Y. 10007

CLERK, UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
FREDERICK W. SILVERMAN,

Plaintiff,

-against-

J. WILLIAM MIDDENDORF, II,  
SECRETARY OF THE NAVY, and  
COMMANDING OFFICER, BUREAU OF  
MEDICINE AND SURGERY, UNITED  
STATES NAVY,

Defendants.  
----- x

76 Civ. 2708

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MICHAEL J. KUNSTLER, ESQ.,  
Of Counsel

HON. ROBERT B. FISKE, JR.,  
United States Attorney for the  
Southern District of New York  
Attorney for Defendants  
GARY G. COOPER, ESQ.,  
LOUIS G. CORSI, ESQ.,  
Assistant United States Attorneys  
Of Counsel

MEMORANDUM

BONSAL, D. J.

Plaintiff, Frederick W. Silverman, moves pursuant to  
Rule 65 of the Federal Rules of Civil Procedure for a preliminary  
injunction enjoining the defendants, J. William Middendorf, II,

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Secretary of the Navy, and Commanding Officer, Bureau of Medicine and Surgery, United States Navy, from ordering him to active duty in the United States Navy. Plaintiff contends that the Navy seeks to call him to active duty more than 6 1/2 years after his enlistment and after he has attained the age of 36 years, contrary to his consent, and in violation of 50 U.S.C. §454(1)(1).

The defendants move pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for an order dismissing the complaint on the grounds that this Court lacks jurisdiction since plaintiff has failed to exhaust his administrative remedies, that plaintiff voluntarily consented to be called to active duty as of July 1, 1976 by virtue of his commission in the United States Naval Reserve Medical Corps, that plaintiff cannot now rely upon his age or years in the service to avoid active duty, and that the Navy's actions are proper under 50 U.S.C. §454(1)(4).

#### Factual Background

It appears undisputed that in 1969 plaintiff applied to the Department of the Navy ("the Department") for a commission in the United States Naval Reserve Medical Corps pursuant to the Armed Forces Physicians' Appointment and Residency Consideration Program, commonly referred to as the "Berry Plan", and that on September 14, 1969, plaintiff entered into an agreement with the Department whereby he consented "... to serve on active duty as a commissioned officer for a period of two (2) years at the conclusion of deferment if the needs of the service so require." Exhibit "A"



attached to Affidavit of Gary G. Cooper dated July 8, 1976. Thereafter, plaintiff accepted a commission as a lieutenant in the United States Naval Reserve Medical Corps.

On February 25, 1970, plaintiff requested a five-year deferment of active military service to complete his residency training in general surgery at the Bronx Municipal Hospital. He was granted a one-year deferment and subsequently, on a year-to-year basis, received additional one-year deferments. See Exhibits "D" through "G" attached to Affidavit of Gary G. Cooper dated July 3, 1976. By letter dated January 28, 1974, plaintiff requested an additional one-year deferment to accept a fellowship in surgical oncology at Roswell Park Memorial Hospital in Buffalo, New York. The deferment was granted on February 22, 1974. Plaintiff then informed the Department that he intended to accept a two-year fellowship at Memorial Sloan Kettering Cancer Center, New York, New York instead of the fellowship at Park Memorial Hospital. By letter dated December 4, 1974, plaintiff was granted an extension of his deferment until June 30, 1976. See Exhibit "S" attached to Affidavit of Gary G. Cooper dated July 8, 1976.

On October 31, 1975, plaintiff was notified by Captain Barcay of the Bureau of Medicine and Surgery of the Department of the Navy that he was in his last year of deferment and that he would become eligible for active duty soon after his training was completed. By letter dated December 22, 1975, plaintiff was informed that the Department planned to call him to active duty in the summer of 1976 and, on March 23, 1976, plaintiff was notified that he was



scheduled to report for active duty on July 7, 1976. By letter dated April 6, 1976, plaintiff requested that he be relieved from further commitment for active duty in the United States Naval Reserve on the grounds of his present age, his years of service in the inactive Reserves, and his family obligations. This request was denied by the Chief of Naval Personnel by letter dated June 11, 1976. See Exhibit "B" attached to plaintiff's Complaint filed June 21, 1976. Plaintiff then commenced this action on June 21, 1976. By agreement of both parties, plaintiff's call to active duty has been deferred pending determination of these motions.

#### The Instant Application

Plaintiff contends that he may not be called to active duty because he is an officer and physician in the United States Naval Reserve over the age of 35 years and that under 50 U.S.C. §454(1)(1) and applicable Department of Defense Regulations the Department of the Navy has neither the authority nor the jurisdiction to activate him. Plaintiff contends that he has exhausted all administrative remedies available to him and that he seeks injunctive relief because he has no other available and adequate remedy at law.

While it is undisputed that plaintiff sought review of his claims by a board authorized by the Chief of Naval Personnel (see Affidavit of D. J. Brideau dated July 2, 1976), it appears that plaintiff has not filed an application for relief before the Board for Correction of Naval Records. See Affidavit of John E.



Corcoran dated June 29, 1976.

Section 1552 of Title 10 of the United States Code provides in part:

"(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. ...

"(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor ... within three years after he discovers the error or injustice, whichever is later. ..."

Under internal guidelines established by the Department of the Navy, a Board of Correction of Naval Records, composed of civilian appointees, hears grievances by naval personnel. Upon notice to the complainant, an administrative hearing is held and written findings of fact and recommendations are then forwarded to the Secretary of the Navy for further action. 32 C.F.R. 723 et seq.

Here, plaintiff was continually reminded of his obligation to serve on active duty in his long correspondence with the Navy dating back to early 1970. See Exhibits "J", "O" and "V" attached to Affidavit of Gary G. Cooper dated July 8, 1976. Plaintiff submitted his request to be relieved from his active duty commitment in April 1976 and received notice of the Chief of Naval Personnel's decision on June 11, 1976, approximately one month before his scheduled reporting date. While plaintiff may have applied to a higher administrative forum for redress of his grievances before



coming to this Court, it appears that such action was not taken.

The Supreme Court has repeatedly warned against premature Court interference with military procedures. See Orloff v. Willoughby, 345 U.S. 83 (1953); Burns v. Wilson, 346 U.S. 137 (1953); Gilligan v. Morgan, 413 U.S. 1 (1973). Indeed, "a court should not review internal military affairs in the absence of (a) an allegation of the deprivation of a constitutional right, or an allegation that the military has acted in violation of applicable statutes or its own regulations, and (b) exhaustion of available intraservice corrective measures." Mindes v. Seaman, 453 F.2d 197, 201 (5th Cir. 1971).

Here, plaintiff has made no showing that he has exhausted available intraservice corrective remedies and, as such, this Court lacks jurisdiction to grant the relief requested. Beard v. Stahr, 370 U.S. 41 (1962); McGee v. Schlesinger, 378 F.Supp. 318 (W.D.Texas 1974).

In any event, it appears that plaintiff, as a participant in the Berry Plan, has incurred an obligation to serve on active duty. Plaintiff voluntarily consented "... to serve on active duty as a commissioned officer for a period of two (2) years at the conclusion of deferment if the needs of the service required." See Exhibit "A" attached to Affidavit of Gary G. Cooper dated July 8, 1976. The Berry Plan specifically permits:

"... participating physicians to be brought to active duty in fulfillment of their obligation for military duty at mutually acceptable times by providing for the (1) appointment in the Reserve components of qualified participants in



the program who are vulnerable for military service under the provisions of the Universal Military Training and Service Act, as amended (50 U.S.C. app. 454(a)), and (2) deferment from military service of selected participants in order to permit them to undergo approved residency training in the various specialities required by the Armed Services." 32 C.F.R. 58.1(b)

Moreover, the Berry Plan, as described in the Navy Recruitment Manual [Comnavcruitcom Instruction 1110.A] "... leads to appointment in the Medical Corps, U.S. Naval Reserve, for inactive duty while completing civilian residency training or research projects. Upon completion of training, participants will be required to serve on active duty." See Exhibit "Z-3" attached to Supplemental Affidavit of Gary G. Cooper dated July 27, 1976.<sup>1/</sup>

It is undisputed that plaintiff was not a commissioned officer in the United States Naval Reserve at the time he consented to serve on active duty. Section 454(1)(4) of Title 50 of the United States Code provides in relevant part:

- "(4) Any physician or dentist who meets the qualifications for a Reserve commission in the respective military department shall, so long as there is a need for the services of such a physician or dentist, be afforded an opportunity to volunteer for a period of active duty (other than for training) of not less than twenty-four months. Any physician or dentist who so volunteers his service, and meets the qualifications for a Reserve commission shall be ordered to active duty (other than for training) for not less than twenty-four months, notwithstanding the grade or rank to which such physician or dentist is entitled

<sup>1/</sup> The Navy established age 41 as a maximum age for eligibility in the Berry Plan and provided that participants be required to serve two years of active duty upon completion of their professional training.



Section 454(1) (1), on the other hand, provides:

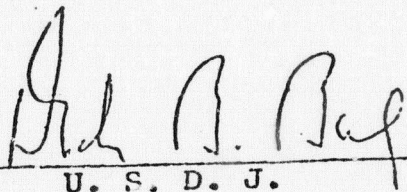
"(1) The President may order to active duty ... for a period of not more than twenty-four consecutive months, with or without his consent, any member of a reserve component of the Armed Forces of the United States who is in a medical, dental, or allied specialist category, who has not attained the thirty-fifth anniversary of the date of his birth, and has not performed at least one year of active duty."

Since it appears that the Berry Plan was designed to assist physicians who were subject to military service under the provisions of the Universal Military Training and Service Act and was not made applicable to physicians who were already members of the reserve components of the Armed Forces, participants in the Berry Plan appear to be subject to the statutory provisions of 50 U.S.C. §454(1) (4) rather than §454(1) (1). See House Armed Services Committee Report No. 394, 85th Cong. 1st Sess.

Accordingly, plaintiff's motion for injunctive relief is denied and defendants' motion to dismiss the complaint is granted.

It is so ordered.

Dated: New York, N.Y.  
November 8, 1976

  
\_\_\_\_\_  
U. S. D. J.



# FILE COPY

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

FREDERICK W. SILVERMAN,

Plaintiff,

-against-

J. WILLIAM MIDDENDORF, II, SECRE-  
TARY OF THE NAVY, and COMMANDING  
OFFICER, BUREAU OF MEDICINE AND  
SURGERY, UNITED STATES NAVY,

Defendants.

76 CIV 2708  
(DBB)

ORDER TO SHOW  
CAUSE

FOR Preliminary  
Injunction

Upon reading the complaint herein, and exhibits annexed thereto, and the affidavit of Frederick W. Silverman, M.D., annexed hereto, and upon all other papers and proceedings heretofore had herein, it is

ORDERED that defendants show cause before this Court, at the United States District Courthouse at Foley Square, New York, N.Y. at <sup>9:30</sup>~~10:00~~ o'clock in the forenoon, in Room 519, on the 28<sup>th</sup> day of June, 1976, or as soon thereafter as counsel can be heard why an order should not be issued granting the plaintiff a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants from ordering plaintiff to active duty effective July 7, 1976 pending a hearing and determination on plaintiff's cause of action, and in the event such preliminary injunction cannot be acted on for temporary injunctive relief pending such determination, and for such other and further relief as this Court may deem just and proper in the premises; and it is further *rescind*

ORDERED that service of a copy of this order together with a copy of the papers upon which it is granted, upon the United States Attorney for the Southern District of New York on or before 4 o'clock in the afternoon on the 21<sup>st</sup> day of June, 1976 shall be deemed good and sufficient service.

ENTER

Dated: New York, N.Y.  
June 21, 1976

S/

U.S.D.J.

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UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

FREDERICK W. SILVERMAN,

Plaintiff,

AFFIDAVIT

-against-

J. WILLIAM MIDDENDORF, II, SECRE-  
TARY OF THE NAVY, and COMMANDING  
OFFICER, BUREAU OF MEDICINE AND  
SURGERY, UNITED STATES NAVY,

Defendants.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

FREDERICK W. SILVERMAN, being duly sworn, deposes and  
says:

I am the plaintiff in the within action and make this  
affidavit in support of the annexed order to show cause and  
motion for temporary and preliminary injunctive relief pur-  
suant to Rule 65 of the Federal Rules of Civil Procedure. I am  
a resident of the County, City and State of New York and a  
licensed physician.

I enlisted in the United States Naval Reserve in or  
about October 1969. At such time I was granted deferment until  
June 1974 to complete a general surgical residency. At the time  
I completed such residency I was 34 years of age, having been  
born March 18, 1940.

Prior to my completing my residency in June 1974, I  
was advised that my services might not be necessary and that I  
should pursue plans to seek further deferment. I did so and be-  
came a Fellow at the Sloan Kettering Institute for Cancer Re-  
search in New York.

In 1975 I was again deferred by the United States Navy  
and continued my Fellowship at Sloan Kettering.

The Navy now seeks to call me to active duty over  
6 1/2 years after my enlistment, after I have attained the age

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of 36 years; and after they have determined that I am needed, two years after completion of my residency in general surgery.

I am advised by counsel that pursuant to Title 50 U.S.C. App. §454(1)(1) I am not to be called to active duty without my consent after I have attained the age of 35 years. I am further advised that my statutory obligation ceases after completing 6 years of service in the United States Naval Reserve.

In addition, I believe my case comes within the meaning and intent of Crowley v. United States, 388 F. Supp. 951 (E.D. Wisc. 1975).

I have duly advised the Navy that I do not consent to being called to active duty now that I am over 36 years of age. A copy of my letter to the Navy is annexed to the Complaint as Exhibit A. The Navy has, on June 15, 1976, determined that I shall continue to be called to active duty and denied my request to be released. A copy of said communication is annexed as Exhibit B.

I bring on this motion for temporary and preliminary injunctive relief at this time because of the late date in which the Navy advised me of their determination of my request filed months earlier.

I believe a temporary and preliminary injunctive relief is warranted in that:

(a) I will suffer irreparable harm by being called to active duty at this time since such will constitute a severe personal and financial hardship upon me, my wife who is pregnant and expecting in August, and my dependent son. I am advised that it has long been recognized that a call to active duty if contrary to regulation and law, is recognized as constituting irreparable harm;

(b) By granting this temporary and preliminary injunctive relief defendants will not suffer severe prejudice in that this action can be quickly determined on the merits



even before I am scheduled to report to my duty station of Orlando, Florida. I have been advised by the Navy that initially I am to undergo orientation for approximately two to three weeks at Norfolk, Virginia.

(c) There is a substantial likelihood of success in that I am over the age of 35 years and have completed 6 years in the Naval Reserve, rendering my callup contrary to the plain meaning of §454(1)(1). Further, I am advised by counsel that my case may also be controlled by Crowley v. United States, supra, in which the Court cancelled the orders of the medical specialist there on issues similar in part, to those raised herein.

I have made no prior application to this or any other court.

I am proceeding by order to show cause because of my schedule to go on active duty on July 7, 1976 and desire to bring this case on as expeditiously as possible.

I am seeking preliminary injunctive relief pursuant to Rule 65 requesting that defendants be enjoined from ordering me to active duty pending a final resolution of the case herein. In the event that the preliminary injunction request cannot be acted on prior to July 7, I further request that I be granted a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure when and if such becomes necessary.

WHEREFORE, it is respectfully requested that the motion be in all respects granted, and that defendants, their agents, servants and employees be enjoined from ordering me to active duty pursuant to Rule 65 of the Federal Rules of

Civil Procedure pending a determination on the merits herein, and  
for such other and further relief as this Court may deem just  
in the premises.

Frederick W. Silverman M.D.

Sworn to before me this  
18th day of June, 1976

Patricia Mazza

PATRICIA MAZZA  
NOTARY PUBLIC, State of New York  
No. 24-7781625  
Qualified in Kings County  
Commission Expires March 30, 1979

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OFF COPY

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

FREDERICK W. SILVERMAN,

Plaintiff,

COMPLAINT

-against-

J. WILLIAM MIDDENDORF, II, SECRETARY OF THE NAVY, and COMMANDING OFFICER, BUREAU OF MEDICINE AND SURGERY, UNITED STATES NAVY,

Defendants.

Plaintiff, by his attorneys, Kunstler & Hyman, for his complaint, alleges as follows:

1. Plaintiff is a resident of the County, City and State of New York and a member of the United States Naval Reserves. Plaintiff has been ordered to go on active duty effective July 7, 1976 for two years.

2. Defendant J. William Middendorf is Secretary of the Navy with offices in Washington, D.C. and is sued herein in his official capacity as the person who has ultimately authorized defendant's call to active duty.

3. Defendant Commanding Officer, Bureau of Medicine and Surgery, United States Navy, has offices in Washington, D.C. and is sued herein in his official capacity as the immediate commanding officer of the reserve unit to which plaintiff is presently assigned while awaiting transfer onto active duty.

4. This action arises under the Constitution of the United States and the laws of the United States, and jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1332, 1361, 1391 and 2255.

5. The matter in controversy exceeds the sum of \$10,000 exclusive of interest and costs.

6. Plaintiff's callup to active duty as a reservist for two years is illegal and contrary to statute and applicable military regulations.

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7. Plaintiff is a physician, having graduated medical school in June of 1969. In October 1969 plaintiff enlisted in the medical program of the Armed Forces known as the Berry Plan and the Armed Forces Physician Appointment and Residency Consideration Program established pursuant to 32 C.F.R. §581 et seq. At such time plaintiff was appointed an officer in the United States Navy Medical Corps Reserve.

8. The said Berry Plan was enacted under the auspices of the Military Selective Service Act of 1967 and its predecessor statutes (Title 50 U.S.C. App. §451 et seq.) to provide for fulfillment by physicians of their statutory obligations imposed under law.

9. Congress provided pursuant to Title 50 U.S.C. App. §456(a)(1) that physicians remain liable for call under the Act until the age of 35, and that upon attaining said age, a physician is free from further obligation.

10. Congress further provided pursuant to Title 50 U.S.C. §454(1)(1) that a physician who became a member of the reserves was likewise eligible for callup to active duty with or without his consent only until he attained the age of 35, and that once having attained said age a physician could not be called to active duty from the reserves without his consent under such statute.

11. In furtherance of the Congressional mandate, the President of the United States promulgated an Executive Order No. 10762 dated March 28, 1958, delegating to the Secretary of Defense authority to call up a physician who is a member of the reserve to active duty who has not attained the age of 35.

12. Congress has further provided under Title 10 U.S.C. Section 651 that the maximum terms of statutory obligation as a member of the Armed Forces is 6 years unless extended by war or National emergency under authority of Congressional mandate. (Title 10 U.S.C. Section 651.)



13. Said Berry Plan was enacted in furtherance of and pursuant to the aforesaid statutes and Executive Order and could not extend or otherwise increase the liability of a physician for service in the United States Armed Forces beyond that mandated by statute.

14. All regulations and Department of Defense instructions must conform to the authority granted the Armed Forces by Congress and cannot exceed or otherwise modify the limitations set forth by statute.

15. Congress has not authorized the President or his subordinates in the Armed Forces to call up physicians who are reservists who are over the age of 35 years without their consent except as may be provided for where a state of war or National emergency is deemed to exist.

16. Congress has not authorized the President or his subordinates in the Armed Forces to extend a physician's obligation beyond the 6 years provided by statute.

17. All agreements entered into between the Armed Forces and individual members are subject to the limitations provided by statute and may not increase a member's statutory obligation to be called to active duty without his consent except where provided for by law.

18. Plaintiff enrolled in the Berry Plan upon completion of school in June 1969, at which time he was over the age of 26 years, having been born on March 18, 1940.

19. At the time plaintiff enrolled in the Berry Plan he was granted a deferment to complete a general surgical residency which he in fact completed as of June 1974.

20. Under the terms of the Berry Plan, as of June 1974 plaintiff was eligible for callup to active duty in that he was under the age of 35 and had not completed 6 years in the Armed Forces reserve.

21. Notwithstanding such eligibility plaintiff was not called to active duty but instead was granted a further

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deferment by the Navy. At the time of granting further deferment defendants knew that plaintiff would attain the age of 35 years in March 1975 and could thereafter not be called to active duty without his consent.

22. In fact, in June 1974 and June 1975 deferment was granted plaintiff by the defendants because his services were not needed by the military and they thereby sought to delay his call to active duty to a time convenient to the Armed Forces.

23. Plaintiff was advised both orally and in writing at diverse times after June 1974 that his services may in fact not be needed and was further advised to request continued deferment notwithstanding completion of his general surgical residency.

24. Plaintiff in June 1974, upon completion of his residency, became a Fellow in the Department of Surgery at the Sloan Kettering Institute for Cancer Research in New York, which continued until June 1976.

25. On April 6, 1976 plaintiff advised the United States Navy that he did not consent to issuance of any orders for call to active duty and further requested consideration as a result of personal hardship. A copy of said letter is annexed hereto as Exhibit A.

26. On June 15, 1976 plaintiff's attorney received a communication from the defendant denying plaintiff's request not to be called to active duty. A copy of such statement is annexed hereto as Exhibit B.

27. Defendants have ordered plaintiff to active duty effective July 7, 1976 and have advised plaintiff through counsel that failure by plaintiff to report on July 7, 1976 would subject him to criminal action as a purported AWOL.

28. Said call to active duty is contrary to law and regulation in that plaintiff is over the age of 35 years, does not consent to callup to active duty, and has completed 6 years in the United States Naval Reserve.

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29. Plaintiff has exhausted all administrative remedies available to him and has no other available adequate remedy at law.

30. Plaintiff seeks temporary and preliminary injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure in that he has been ordered to report for active duty on July 7, 1976 notwithstanding that he is not legally obligated to do so and unless his stay is granted he will suffer irreparable harm in that he will be forced to leave his home and family and report to active duty for two years or, in the alternative, risk being declared absent without leave and apprehended on criminal charges. In addition, plaintiff will otherwise suffer personal hardship by reason of his call to active duty.

WHEREFORE, plaintiff requests the following relief:

A. A temporary restraining order and preliminary injunction be granted enjoining defendants from ordering plaintiff to active duty pending determination of the merits herein.

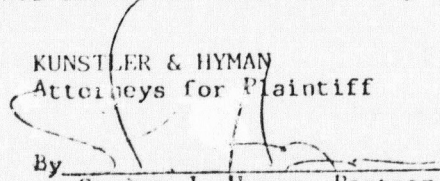
B. A declaratory judgment declaring the rights and obligations between plaintiff and defendant and particularly as to whether plaintiff may be called to active duty against his will after attaining the age of 35 years notwithstanding the applicable terms of Title 50 U.S.C. App. §451 et seq and Title 10 U.S.C. §651.

C. An order mandating and requiring defendants to cancel plaintiff's order to active duty.

D. Enter an order directing plaintiff's release from the United States Navy Reserve as having completed 6 years' service; and

E. Such other and further relief as this Court may deem just and proper.

KUNSTLER & HYMAN  
Attorneys for Plaintiff

By   
Steven J. Hyman, Partner  
370 Lexington Avenue  
New York, N.Y. 10017

A-20



FREDERICK SILVERMAN, M.D.  
301 East 69th Street  
New York, New York 10021

April 6, 1976

Bureau of Naval Personnel  
(Code PERS R 612)  
Department of the Navy  
Washington, D.C. 20370

Via: Bureau of Medicine and Surgery  
(Code 36)  
Department of the Navy  
Washington, D.C. 20372

Re: Dr. Frederick Silverman  
MC USNR-R  
S.S. #052-32-1806

Gentlemen:

I hereby request my release from further commitment for active duty in the U.S. Naval Reserve and that I not be called to active duty on the grounds that I am no longer an obligated reservist in that I am over the age of 36 years and have completed 6 years in the Inactive Reserve. In addition, because of my age, training and family obligations a call to active duty now would impose personal and community hardship.

As my records will indicate, I was born on March 18, 1940 and enlisted in the Berry Plan of the U.S. Naval Reserve in or about August 16, 1969 when I was twenty-nine years old. Since I have been in the Reserves for over 6 years and have passed my 35th birthday without previously having been called to active duty, I believe that under law I am entitled to release from any further active duty commitment.

In addition to the legal reasons for my release from an active duty commitment, there are also personal hardship reasons that warrant consideration of my request. As my records indicate, I am married and have one child and at present my wife is pregnant and encountering difficulties with her pregnancy. She has been diagnosed as a borderline pre-eclamptic, which may

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EXHIBIT A



April 6, 1976

require her hospitalization, particularly during the last trimester of her pregnancy. Aside from the medical condition, this has caused psychological problems, as well.

In addition, I hope that the Navy will take into account my unique situation in being asked to serve for two years at so late a stage in my life. At age 36 I believe I am one of the oldest physicians to be under a Berry Plan obligation. While in past years the Navy has indicated to me that my services were not required and that I should continue to pursue my residency, it seems unduly harsh now to require me, at this age, to enter two years of active duty service. Thus I am asking for my release from any such requirement.

I have been trained in head and neck cancer surgery and intend to use my skills in a community that does not have such a specialist available. I hope in such a manner to be able to help and serve the community and render medical care that was previously not available to the community.

In view of the legal factors as well as the other considerations set forth above, I request that the Navy favorably consider my request and that I be released from call to active duty. I would be happy to meet with Naval personnel at their convenience to discuss this matter and to provide such other documentation or information as may be necessary.

Thank you for your attention and consideration of this request. I await your earliest reply.

Very truly yours

Frederick Silverman, M.D.

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Pers-44150-RLS-sk  
052 32 1606/2105  
11 June 1976

From: Chief of Naval Personnel  
To: LCDR Frederick W. SILVERMAN, MC, USNR  
301 East 69th Street  
New York, New York 10021

Subj: Release from active duty obligation

Ref: (a) Your letter of 6 April 1976

1. By reference (a) you requested release from your active duty obligation with the Navy based on your belief that you are no longer legally obligated to serve on active duty, and for reasons of personal and community hardship.

2. Your request has been carefully considered by a board of officers established to assist the Chief of Naval Personnel by making appropriate recommendations in cases such as yours. It was the consensus of that board that your request not be approved in view of the fact that it has been determined that you remain legally obligated to serve on active duty for a period of two years, and that the hardship reasons set forth in your request are not considered to be of such severity as to warrant rescission of your active duty commitment.

3. It is regretted that a more favorable reply is not possible.

B. BECKTELL  
By direction

Copy to:  
Mr. Steven J. Hyman  
370 Lexington Avenue  
New York, New York 10017

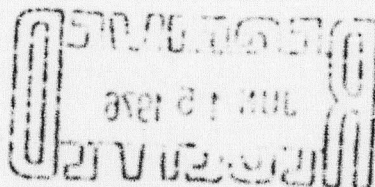


EXHIBIT B

BEST COPY AVAILABLE



LGC:n

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
FREDERICK W. SILVERMAN,

Plaintiff,

-against-

J. WILLIAM MIDDENDORF, II,  
SECRETARY OF THE NAVY, and  
COMMANDING OFFICER,  
BUREAU OF MEDICINE and SURGERY,  
UNITED STATES NAVY,

Defendants. :  
-----X

NOTICE OF MOTION

76 Civ. 2708 (DBB)

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Gary G. Cooper with exhibits annexed thereto, and the additional affidavits and Memorandum of Law submitted herewith, the defendants by their attorney Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, will move this Court before the Honorable Dudley B. Bonsal in Room of the United States Courthouse, Foley Square, New York, New York on July 12, 1976 at 9:30 A.M. for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the complaint, and for such further relief as is just and proper.

Dated: New York, New York

July 8, 1976

ROBERT B. FISKE, JR.  
United States Attorney for the  
Southern District of New York,  
Attorney for Defendants

By: Gary G. Cooper

GARY G. COOPER  
Assistant United States Attorney  
Office and Post Office Address:  
United States Courthouse Annex  
One St. Andrew's Plaza  
New York, New York  
Tel. No.: (212) 791-1979

TO:

KIRSTLER & HYMAN  
370 Lexington Avenue  
New York, New York

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
FREDERICK W. SILVERMAN,

Plaintiff,

-against-

J. WILLIAM MIDDENDORF, II,  
SECRETARY OF THE NAVY, and  
COMMANDING OFFICER,  
BUREAU OF MEDICINE and SURGERY,  
UNITED STATES NAVY,

Defendants.

AFFIDAVIT

76 Civ. 2708 (DBB)

----- x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

GARY G. COOPER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York. I am in charge of this case for my office and I make this reply affidavit in opposition to plaintiff's order to show cause for a preliminary injunction.

Plaintiff's History with the Department of Navy

2. Plaintiff's papers in support of his motion by order to show cause purported to describe his history with respect to deferments from active service from 1969 through 1976 in terms designed to imply that such deferments were granted for the convenience of the Department of Navy (the "Department") (Silverman Aff. p. 1). In fact, correspondence and documents by and between plaintiff and the Department copies of which are contained in Exhibit "1" attached here-

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to\*, support an opposite conclusion.

3. In August 1969 plaintiff applied to the Department for a commission in the Naval Reserve Medical Corps, pursuant to "Armed Forces Physicians Appointment and Residency Consideration Program", commonly referred to as the "Berry Plan"\*\*.

4. On September 14, 1969 plaintiff entered into a written agreement with the Department whereby he expressly promised and agreed to "serve on active duty as a commissioned officer for a period of two (2) years at the conclusion of deferment if the needs of the service so require" in consideration of the Department's approval of his application for the Berry Plan (Exhibit "A").

5. On or about November 4, 1969 plaintiff accepted a commission as a lieutenant in the Medical Corps Naval Reserve (Exhibit "B").

6. On or about February 25, 1970 plaintiff requested a five year postponement of active military service to complete residency training in general surgery at Bronx Municipal Hospital (Exhibit "C"). A one year deferment was granted by the Department. Thereafter, on a year-to-year basis, the Department granted plaintiff one year deferments pursuant to his 1970 request and the four separate renewals of this request from 1971 through 1974 evidenced by four "Request for Continued Deferment" forms (Exhibits "D" through "G").

---

\* A separate exhibit binder accompanies this affidavit containing sealed copies of plaintiff's service records and has been marked Exhibit "1" to this affidavit. For the convenience of the Court copies of documents contained in Exhibit "1" and specifically referred to herein have been segregated and are annexed hereto as Exhibits "A" through "Z".

\*\* The Berry Plan was established to permit participating physicians to fulfill their service obligations and to complete residency training, by appointment to reserve components and by granting deferments from active duty until and throughout residency training is completed. 32CFR53 et seq..



7. On or about January 28, 1974 plaintiff wrote to the Department indicating that he would complete his training in general surgery at Henry Ford Hospital in June 1974. In this letter, plaintiff requested a further deferment to accept a fellowship at Roswell Park Memorial Hospital in Buffalo, New York. In support of his request he stated, "I believe this additional formal training will be invaluable to me and at the same time make my service to the NAVY more useful" (Exhibit "H"). The letter was followed by a renewal form dated February 5, 1974. (Exhibit "I") On February 22, 1974, per plaintiff's request, the Department of Navy granted the additional deferment to July 1975 (Exhibit "J").

On that same day, February 22, 1974, plaintiff forwarded a letter to the Department indicating that he intended to accept a two year fellowship at Memorial Sloan Kettering Cancer Center, New York, New York, in place of the fellowship at Park Memorial Hospital (Exhibit "K"). On or about March 18, 1974 plaintiff forwarded a "Request for Continued Deferment" form to the Department, requesting a continued postponement of his active naval service to complete the two year training program in surgical oncology at Memorial Sloan Kettering Cancer Center (Exhibit "L").

Finally, in a September 9, 1974 letter to the Department, plaintiff indicated that he was a fellow at Sloan Kettering and requested a continued deferment to June 30, 1976, to complete this fellowship (Exhibit "M").

8. On September 23, 1974 the Department wrote to plaintiff explaining that they were not then in a position to



advise him on his request for further deferment (beyond July 1975) until they had an opportunity to assess their needs (Exhibit "N").

On October 29, 1974 a form letter was forwarded by the Department to plaintiff concerning his military status and requesting him to forward a curriculum vitae and to complete and return an active duty questionnaire. It was explained that the purpose of this information was to aid a board of officers, which was to meet in January 1975 to determine whether the Department would call plaintiff to active duty upon expiration of his deferment in July 1975 (Exhibit "O").

Plaintiff forwarded a curriculum vitae, the completed questionnaire and a completed "Berry Plan Option Sheet" dated November 1, 1974 to the Department (Exhibits "P", "Q", "R").

9. On December 4, 1974 and December 6, 1974 the Department notified plaintiff that his request for continued deferment had been granted (Exhibits "S" and "T"). On December 12, 1974 plaintiff once again confirmed his request for postponement in a continued deferment request form (Exhibit "U").

10. On or about October 31, 1975 Captain Barcay of the Department wrote to plaintiff indicating that plaintiff was in his last year of deferment and requesting him to complete and return a questionnaire and to forward an updated curriculum vitae (Exhibit "V").

On November 9, 1975 plaintiff returned the questionnaire indicating that he would complete his training on June 30, 1976 and that he desired to commence his active duty on July 1, 1976. He also asked to be informed if the



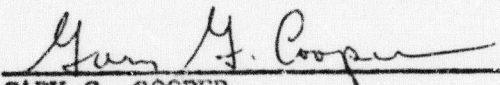
LGC:n

Navy intended to call him to duty in 1976 (Exhibit "W"). On December 8, 1975, as time for plaintiff's deferment to end drew nearer, plaintiff wrote to Captain Barcay of the Department, demanding information with respect to the Department's intention to call him to active duty (Exhibit "X").

On December 22, 1975 Captain Barcay replied to plaintiff's December 8 letter, stating that the Department intended to call plaintiff to active duty in the summer of 1976 and that it would not be releasing any surgeons from their Berry Plan obligations (Exhibit "Y").

On March 23, 1976 plaintiff was informed by letter from Captain Barcay that he was scheduled for active service as of July 7, 1976 (Exhibit "Z").

On April 8, 1976 Steven Hyman, Esq. forwarded an April 6, 1976 letter from plaintiff to the Department requesting release from further commitment for active duty (Exhibit "A" to Complaint). This request was denied by the Department (Exhibit "B" to Complaint).

  
GARY G. COOPER  
Assistant United States Attorney

Sworn to before me this  
8<sup>th</sup> day of July 1976

\_\_\_\_\_  
Notary Public

RAULPH L. LEE  
Notary Public, State of New York  
No. 41-27324 Queens County  
Term Expires March 24, 1977

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0011

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

CONFIDENTIAL

CONFIDENTIAL

I, Walter J. Rouse, hereby certify that the following information is true and correct:

- a. That said approval of my application will be determined by the Chief of Special Operations.
- b. That upon satisfactory completion of all requirements, I will accept appointment as commissioned grade of a Marine officer in the United States Navy in the Marine Corps, or such a commission as entitled to.
- c. That:
  - (1) A commission as a Marine officer in the United States Navy will be in the name of the President.
  - (2) Upon completion of a commission, I will be required to serve in the position of a Marine officer for a period of 24 months at a distance of 100 miles from the United States Navy.
  - (3) If under 20 at time of appointment, I will be required to serve in the position of a Marine officer in the United States Navy for a period of 24 months at a distance of 100 miles.
  - (4) Any period of that service period not served as active duty will be served as inactive duty.
  - (5) A commission as a Marine officer will be placed in the position of a Marine officer in the United States Navy and such a period may be accepted or rejected by the President in the name of the United States Navy.
- d. That the United States Navy and the United States Marine Corps are the only providers of service.

Walter J. Rouse

Walter J. Rouse, Jr., is a Marine officer in the United States Navy and is a member of the United States Marine Corps. He is a member of the United States Marine Corps and is a member of the United States Marine Corps.

Walter J. Rouse

Exhibit A

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\*671b. Members: Service extension when Congress is not in session.

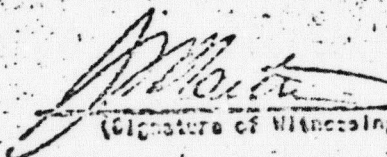
"(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the Armed Forces of the United States, that expire before the thirtieth day after Congress next convenes or reconvenes.

"(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order."

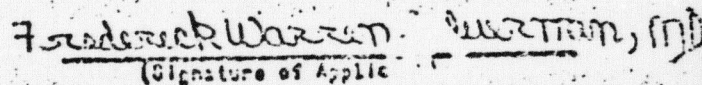
a. That Federal statutes and pertinent regulations applicable to the personnel in the United States Navy may change without notice and that such changes may affect my status as a commissioned officer and obligation to serve as such.

2. I consent to serve on active duty as a commissioned officer for a period of two (2) years at the conclusion of deferment if the needs of the service so require.

3. I have read and completely understand the meaning and content of the above. No promises either written or oral have been made to me in connection with my application to the Perry Plan/ORD Program, except as specified above. I acknowledge receipt of a copy of this document.

  
(Signature of Witnessing Officer)

J. S. HENNING, LT USNR  
(Typed Name, Grade of Witnessing Officer)

  
(Signature of Applicant)

Frederick Warren Silverman, U.S.N.  
(Typed Name of Applicant)

500283 32N/005-31-0457  
(Typed Service No. & Social Security No. of Witnessing Officer)

9/14/69  
(Date)

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THE SECRETARY OF THE NAVY  
WASHINGTON

S-1

Pers-B6131-423  
759390/2105

From: Secretary of the Navy  
To: LTJG Frederick Warren SILVERMAN, MC, USN

Via: Commanding Officer  
Navy Recruiting Station  
New York, New York

OCT 27 1969

Subj: Temporary appointment in the ☐ U. S. Navy, ☒ Reserve of the U. S. Navy

Ref: (a) 10 U. S. Code, Sections 593 and 5600

1. Pursuant to authority contained in reference (a), and conditioned upon and effective from the acceptance of permanent appointment, the President of the United States appoints you a Lieutenant in the Medical Corps in the Reserve of the U. S. Navy, for temporary service, to rank from the 1st day of December 1968.

2. You will indicate by endorsement to this letter, whether you do or do not decline this appointment.

FOR THE PRESIDENT:

JOHN H. CHAFEE  
Secretary of the Navy.

ACKNOWLEDGMENT OF TEMPORARY APPOINTMENT

11 November 1969

From: LT Frederick Warren SILVERMAN, MC, USN  
To: Commanding Officer and/or Officer in Charge, Navy Recruiting Station, N.Y., N.Y.

1. I acknowledge receipt of notice of temporary appointment to the grade indicated above and understand that the effective date is the same date as that on which I have accepted my permanent appointment in the ☐ U. S. Navy, ☒ Reserve of the U. S. Navy.

2. ☒ I do accept this appointment.

3. ☐ I do not accept this appointment.

*Frederick Warren Silverman*

Frederick Warren SILVERMAN

(Signature of Appointee)

*E. W. Fitzgerald*

E. W. FITZGERALD LT, USN, OPF PROC OFFICER

(Signature of Witnessing Officer)

NAVPERS 2689 (Rev. 12-67)

Exhibit "B"

THIS COPY FOR BUREAU CONCERNED

A-32

BEST COPY AVAILABLE



NAVPER 962 (REV. 3-66)

Orig. Source Code:

Curr. Source Code:

Birth Date:

(15)

18 Mar 1940

Reply Refer To:

PERS-B6131/

759390/2105 (0)  
052 32 1306

MD- 3 Jun 1969

PLSD - 3 Jun 1969 APPOINTMENT AS RESERVE OFFICER IN UNITED STATES NAVY

From: The Chief of Naval Personnel, Department of the Navy

To: Frederick Warren SILVERMAN  
Bronx Municipal Hospital Center  
1300 Morris Park Avenue  
Bronx, New York 10461

OCT 27 1969

Via: CO, CRUINGTA, New York, New York

Subject: Appointment to Commissioned Grade as a Reserve Officer in the United States Navy

Enclosure: Commission

1. The President having appointed you a Reserve Officer in the United States Navy, the Chief of Naval Personnel takes pleasure in transmitting herewith your appointment. Effective on the date of your acceptance of appointment if accepted in sufficient time to report in compliance with orders if held or which may be your status is:

Grade: Lieutenant (junior grade) (Medical Corps), 2105, USN

Date of Rank: 3 December 1966

Advance Copy: Billed, Code 36

Enlisted Number:

☐ ACTIVE DUTY

☒ INACTIVE DUTY

☐ If block is checked, the Appointing Officer will insure that the appointee is discharged from his enlisted status effective the day immediately preceding the date he executes the Acceptance and Oath of Office below. BuPers Manual, Article C-1106 refers.

2. Appointment must be accepted within 15 days after receipt in the Recruiting Station.

A. O'Malley  
By Direction

### ACCEPTANCE AND OATH OF OFFICE

I, Frederick Warren SILVERMAN, do hereby accept the above appointment as a Reserve Officer in the grade of Lieutenant (junior grade) (Medical Corps) in the United States Navy; do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God. I understand that this appointment is null and void if not accepted by the date specified above.

New York

New York

Frederick Warren Silverman  
Frederick Warren SILVERMAN  
(Signature in Full)

Subscribed and sworn to before me this

14th November 1969  
E. W. FITZGERALD, LT, USN, OFF PRCS OFF  
(Signature and Official Title)

A-33



PLEASE TYPE	REQUEST FOR DEFERMENT FOR RESIDENCY TRAINING		Form Approved Budget Bureau No. 22-R0148	
For use by physicians selected for residency training deferment by the Department of Defense. Return this form, after Part I and Part II have been properly executed, to: Deputy Assistant Secretary of Defense (M & RA) Health & Medical, Washington, D. C. 20301				
PART I - REQUEST FOR RESIDENCY TRAINING (To be completed by physician)				
23		DATE <u>21-Feb-70</u> (Day - Mo - Yr)		
I HEREBY REQUEST THAT MY ACTIVE MILITARY SERVICE BE POSTPONED FOR COMPLETION OF TRAINING IN THE SPECIALTY OF <u>GENERAL SURGERY</u> FOR A TOTAL OF <u>5</u> YEARS; BROKEN DOWN, WHERE APPROPRIATE, AS FOLLOWS: <u>5 YEARS</u>				
PRE-SPECIALTY (Yrs)		SPECIALTY (Yrs)		SUB-SPECIALTY (Yrs)
I ANTICIPATE MY RESIDENCY TRAINING WILL TERMINATE (Mo and Yr) <u>6-75</u> IN THE EVENT I ELECT TO CHANGE SPECIALTY, TRAINING HOSPITAL, OR TERMINATE MY RESIDENCY TRAINING FOR ANY REASON, I WILL IMMEDIATELY NOTIFY THE ABOVE CITED ADDRESSEE.				
NAME OF PHYSICIAN (Please type) (First-MI-Last-Jr-Sr-etc.) <u>FREDERICK W. SILVERMAN, M.D.</u>		SIGNATURE OF PHYSICIAN <u>Fredrick W. Silverman, M.D.</u>		
STREET ADDRESS OF PHYSICIAN <u>955 UNDERHILL AVE.</u>		SELECTIVE SERVICE NO. <u>30 6 40 25 052</u>		SOCIAL SECURITY NO. <u>32 1206</u>
CITY-STATE-ZIP CODE <u>BRONX, NEW YORK 10472</u>		DATE OF GRADUATION (Day-Mo-Yr) <u>1961</u> Check one: <input checked="" type="checkbox"/> NEW YORK MEDICAL COLLEGE <input type="checkbox"/> MEDICAL SCHOOL <input type="checkbox"/> SCHOOL OF OSTEOPATHY		
PART II - HOSPITAL AGREEMENT (To be completed by hospital representative)				
DEFERMENTS ARE APPROVED FOR THE NUMBER OF YEARS REQUIRED FOR THE TRAINING PROGRAM OF THE HOSPITAL, PROVIDING THE TRAINING, AS INDICATED IN THE "DIRECTORY OF APPROVED INTERNSHIPS AND RESIDENCIES" MEETS THIS, IT MUST BE EXPLAINED ON THE REVERSE SIDE OF THIS FORM TO AVOID DELAY IN FURTHER PROCESSING. THE TRAINING PROVIDED MUST MEET THE REQUIREMENTS FOR SPECIALTY BOARD CERTIFICATION.				
THE ABOVE NAMED PHYSICIAN HAS BEEN ACCEPTED FOR RESIDENCY TRAINING IN THE SPECIALTY INDICATED ABOVE. HIS TRAINING WILL BEGIN <u>12 MAR 70-71</u> (Day - Mo - Yr)				
THE LENGTH OF THE APPROVED TRAINING TO BE PROVIDED BY THIS HOSPITAL IS <u>5</u> YEARS, IN SPECIALTY OF: <u>GENERAL SURGERY</u> . ANTICIPATED DATE APPLICANT WILL MEET MINIMUM TRAINING REQUIREMENTS ESTABLISHED BY THE BOARD <u>12 MAR 70-71</u> (Month and Year)				
IT IS THE UNDERSTANDING OF THIS HOSPITAL THAT THE ACTIVE MILITARY SERVICE OF THE ABOVE NAMED PHYSICIAN WILL BE POSTPONED FOR THE PURPOSE OF PERMITTING HIM TO COMPLETE THIS RESIDENCY TRAINING WHICH IS ESSENTIAL TO THE ARMED FORCES. THIS IN NO WAY BINDS THE HOSPITAL FOR CONTINUED TRAINING SHOULD THE PHYSICIAN PROVE UNSATISFACTORY. DD Form 44 forwarded to Local Board <u>5-6-70</u>				
IN THE EVENT THE PHYSICIAN PROVES UNSATISFACTORY OR FOR ANY REASON DISCONTINUES TRAINING IN THE ABOVE SPECIALTY, THE HOSPITAL WILL NOTIFY THE ABOVE-CITED ADDRESSEE.				
IT IS FURTHER UNDERSTOOD, THAT AS A RESERVE OFFICER ON INACTIVE DUTY, THIS PHYSICIAN RECEIVES NEITHER PAY NOR ALLOWANCES FROM THE ARMED FORCES AND IS, THEREFORE, ELIGIBLE TO ACCEPT THE NORMAL STIPEND PAID RESIDENTS BY THIS INSTITUTION.				
NAME OF HOSPITAL (Please type) <u>121</u>		SIGNATURE OF HOSPITAL OFFICIAL, TITLE <u>121</u>		
STREET ADDRESS OF HOSPITAL (Please be specific) <u>121</u>		TYPE NAME OF HOSPITAL OFFICIAL <u>121</u>		
CITY-STATE-ZIP CODE <u>121</u>		DATE (Day-Mo-Yr) <u>121</u>		



BUMED:361: Jap  
759390/2105  
12 February 1971

FROM: Chief, Bureau of Medicine and Surgery

To: LT Frederick W. SILVERMAN, MC, USNR  
Bronx Municipal Hospital Center  
Pelham Pkwy S & Eastchester Rd.  
Bronx, New York 10461

Subj: Deferment for residency training (Berry Plan)

Encl: (1) Request for continued deferment  
(2) Ready Reserve Transfer Request/Agreement  
(3) Self-addressed envelope

1. Your deferment has been approved for the second year of residency training in General Surgery, beginning 1 July 1971.

2. To provide the necessary recording document to effect this delay, it is requested that you complete Part I of enclosure (1), have Part II-Hospital Agreement, properly filled out, authenticated and returned to this Bureau not later than 15 March 1971. In the event that it is not possible for you to continue in residency training, please return the form, indicating the reason thereon.

3. Berry Plan participants are required to be members of the Ready Reserve during the period of time that they are undergoing residency training. It is requested that you complete enclosure (2). You must insert a date that is not less than three years. You may use the term indefinite if you wish. Regardless of the date that you insert, your agreement will be cancelled when you report for active duty.

4. The self-addressed envelope is for your convenience in returning these forms. Please return both of them to this Bureau even though the Ready Reserve Transfer Request/Agreement is addressed to the Chief of Naval Personnel.

WENDELL A. JOHNSON  
By direction

Exhibit D<sub>2</sub>

A-35



ARMED FORCES PHYSICIANS' APPOINTMENT AND RESIDENCY CONSIDERATION PROGRAM  
(Berry Plan)

PART I - REQUEST FOR CONTINUED DEFERMENT (To Be Completed By Physician)

I hereby request that my active naval service be postponed to permit me to complete the 3RD year of residency training in GEN. SURGERY.  
(Specialty)

In the event I elect to change specialty training; training hospital; or terminate my residency training for any reason, I will immediately notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

FREDERICK W. SILVERMAN, MD LT 759390/2105  
Name of Physician Rank and File Number  
27622 PARKVIEW BLVD 30 6 40 251  
Street Address of Physician Selective Service Number  
WARREN, MICH 48092 FREDERICK W. Silverman MD  
City and State Signature of Physician

PART II - HOSPITAL AGREEMENT

The above physician has been accepted for further training in Gen. Surg..  
(Specialty)

His residency training year will begin July 1, 1972.  
(Month, Day, Year)

Length of approved training program in this specialty at this hospital is 5 years.

It is the understanding of this hospital that the active naval service of this physician will be postponed for the purpose of permitting him to complete residency training. This in no way binds the hospital for continued training should the physician prove unsatisfactory.

In the event the physician proves unsatisfactory or for any reason discontinues training in the above specialty, this hospital will notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

It is further understood that as a Naval Reserve officer on inactive duty, this physician receives neither pay nor allowances from the Armed Forces and is therefore eligible to accept the normal stipend paid residents by this institution.

Henry Ford Hosp. John G. Whitcomb  
Name of Hospital Signature of Hospital Official  
2799 West Grand Blvd. John G. Whitcomb, M.D.  
Street Address of Hospital Typed Name of Hospital Official  
Detroit, Michigan 48202 31 Jan., 1972  
City and State Date



BUMED:361:rrh  
759390/2105  
25 January 1972

FROM: Chief, Bureau of Medicine and Surgery

TO: LT Frederick W. SILVERMAN, MC, USNR  
Henry Ford Hospital  
2799 W. Grand Blvd.  
Detroit, Michigan 48202

SUBJ: Deferment for residency training (Berry Plan)

ENCL: (1) Request for continued deferment  
(2) Self-addressed envelope

1. Your deferment has been approved for the <sup>third</sup> year of residency training in **General Surgery, beginning 1 July 1972.**
2. To provide the necessary recording document to effect this delay, it is requested that you complete Part I of enclosure (1), have Part II Hospital Agreement, properly filled out, authenticated and returned to this Bureau not later than 15 February 1972. In the event it is not possible for you to continue in residency training, please return the form, indicating the reason thereon.
3. The self-addressed envelope is for your convenience in returning this form.

WENDELL A. JOHNSON  
By direction

Exhibit "E2"

A-37



ARMED FORCES PHYSICIANS' APPOINTMENT AND RESIDENCY CONSIDERATION PROGRAM  
(Berry Plan)

PART I - REQUEST FOR CONTINUED DEFERMENT (To Be Completed By Physician)

I hereby request that my active naval service be postponed to permit me to complete the 4TH year of residency training in GENERAL SURGERY  
(Specialty)

In the event I elect to change specialty training; training hospital; or terminate my residency training for any reason, I will immediately notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

FREDERICK W SILVERMAN LT 052 32 1806  
Name of Physician Rank and Social Security Number  
27622 PARKVIEW BLVD 30 6 40 251  
Street Address of Physician Selective Service Number  
WARREN, MICH 48092 FREDERICK W SILVERMAN MD  
City and State Signature of Physician

PART II - HOSPITAL AGREEMENT

The above physician has been accepted for further training in Gen. Surg  
(Specialty)

His residency training year will begin July, 1973  
(Month, Day, Year)

Length of approved training program in this specialty at this hospital is 4 years.

It is the understanding of this hospital that the active naval service of this physician will be postponed for the purpose of permitting him to complete residency training. This in no way binds the hospital for continued training should the physician prove unsatisfactory.

In the event the physician proves unsatisfactory or for any reason discontinues training in the above specialty, this hospital will notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

It is further understood that as a Naval Reserve officer on inactive duty, this physician receives neither pay nor allowances from the Armed Forces and is therefore eligible to accept the normal stipend paid residents by this institution.

Henry Ford Hosp John G. Williams  
Name of Hospital Signature of Hospital Official  
2799 W. Grand Blvd General Surg Director  
Street Address of Hospital Typed Name of Hospital Official  
Detroit Mich 2 March 1973  
City and State Date  
48202

Exhibit "F"

A-38



BUMED:361:rrh  
052 32 1306/2105-

FROM: Chief, Bureau of Medicine and Surgery

TO: LT Frederick W. SILVERMAN, MC, USNR  
Henry Ford Hospital  
2799 West Grand Blvd  
Detroit, Michigan 48202

SUBJ: Deferment for residency training (Berry Plan)

ENCL: (1) Request for continued deferment  
(2) Self-addressed envelope

1. Your deferment has been approved for the fourth year of residency training in General Surgery, beginning 1 July 1973.
2. To provide the necessary recording document to effect this delay, it is requested that you complete Part I of enclosure (1), have Part II Hospital Agreement, properly filled out, authenticated and returned to this Bureau immediately. In the event it is not possible for you to continue in residency training, please return the form, indicating the reason thereon.
3. The self-addressed envelope is for your convenience in returning this form.

WENDELL A. JOHNSON  
By direction

Exhibit "F2"

A-39



BUMED:361:rrh

052 32 1806/2105  
29 January 1974

FROM: Chief, Bureau of Medicine and Surgery

TO: LT Frederick W. SILVERMAN, MC, USNR  
27622 Parkview Blvd  
Warren, Mi. 48089

SUBJ: Deferment for residency training (Berry Plan)

ENCL: (1) Request for continued deferment  
(2) Self-addressed envelope

1. Your deferment has been approved for the fifth year of residency training in General Surgery, beginning 1 July 1974.
2. To provide the necessary recording document to effect this delay, it is requested that you complete Part I of enclosure (1), have Part II Hospital Agreement, properly filled out, authenticated and returned to this Bureau not later than 1 March 1974. In the event it is not possible for you to continue in residency training, please return the form, indicating the reason thereon.
3. The self-addressed envelope is for your convenience in returning this form.

WENDELL A. JOHNSON  
By direction

Exhibit "G<sub>2</sub>"

A 40



Jan. 28, 1974

27622 Parkview Blvd.  
Warren , Michigan 48092

Capt. S.J. Barcay  
Dept. of the NAVY  
Code 3173  
Bureau of Medicine & Surgery  
Washington, D.C. 20372

Re: Frederick W. Silverman  
Ser. No. 759390

Dear Capt. Barcay,

I wish to thank you for your assistance during our telephone conversation this morning.

As I explained to you on the telephone, I am completing my residency training in General Surgery at the Henry Ford Hospital in Detroit, Mich at the end of June 1974. I have a Berry Plan (Type I, I believe) deferment and wanted to know whether or not I was going to be called up this July.

I have been offered a fellowship in Surgical Oncology at the Roswell Park Memorial Hospital in Buffalo for the academic year beginning July 1, 1974 to continue my surgical training. I wish to request of the NAVY a deferment so that I may accept the fellowship at Roswell Park. I believe this additional formal training will be invaluable to me and at the same time make my service to the NAVY more useful. I will have the Chairman of the Dept. of Surgery at Roswell Park write to you promptly indicating that I have been offered a position and what I shall be doing there.

If I can be of further assistance to you by supplying more information please let me know. Thank you.

Sincerely,

*Frederick W. Silverman*  
Frederick W. Silverman, M.D.

*There is no correspondence in Dr Silverman's record re - the above. His BP agreement was for 5 yrs and does not expire until 7/75.*

*Approve for fellowship*

*-SJB/3173*

*Exhibit "H"*

VR  
RSA  
3114

*A-41*



# RUSH

## ARMED FORCE, PHYSICIANS' APPOINTMENT AND RESIDENCY CONSIDERATION PROGRAM (Berry Plan)

### PART I - REQUEST FOR CONTINUED DEFERMENT (To Be Completed By Physician)

I hereby request that my active naval service be postponed to permit me to complete the 1 1/2 - 2 years of residency training in SURGICAL ONCOLOGY.  
(Specialty)

In the event I elect to change specialty training; training hospital; or terminate my residency training for any reason, I will immediately notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

FREDERICK W. SILVERMAN MD LT. 052 32 1806  
Name of Physician RANK AND SOCIAL SECURITY NUMBER

27622 PARKVIEW BLVD

30 - 6 - 40 - 251  
Selective Service Number

Street Address of Physician

WARREN MICH 48092

Frederick W. Silverman MD  
Signature of physician

City and State

# URGENT

### PART II - HOSPITAL AGREEMENT

GEN Surgery

The above physician has been accepted for further training in Surgical Oncology.  
(Specialty)

His residency training year will begin 7 1 74.  
(Month, Day, Year)

Length of approved training program in this specialty at this hospital is 5<sup>th</sup> 74-75  
1 1/2 to 2 years.

It is the understanding of this hospital that the active naval service of this physician will be postponed for the purpose of permitting him to complete residency training. This in no way binds the hospital for continued training should the physician prove unsatisfactory.

In the event the physician proves unsatisfactory or for any reason discontinues training in the above specialty, this hospital will notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

It is further understood that as a Naval Reserve officer on inactive duty, this physician receives neither pay nor allowances from the Armed Forces and is therefore eligible to accept the normal stipend paid residents by this institution.

Roswell Park Memorial Institute  
Name of Hospital

Edward Douglas Holyoke  
Signature of Hospital official

666 Elm Street  
Street Address of Hospital

Edward Douglas Holyoke, M.D.  
Typed Name of Hospital official

Buffalo, New York 14203  
City and State

2/5/74  
Date

Exhibit I

A-42



22 FEB 1974

Frederick W. Silverman, M.D.  
27622 Parkview Blvd.  
Warren, Michigan 48092

Dear Doctor Silverman:

This will acknowledge your recent letter by this Bureau.

I am pleased to inform you that your request for a deferment to accept a fellowship in Surgical Oncology at the Roswell Park Memorial Hospital has been approved.

Your records here have been adjusted to reflect an anticipated active duty date of July 1975 rather than July 1974. I wish you continued success in your training program. We will be looking forward to welcoming you as a member of our Health Care Delivery Team in the summer of 1975.

Sincerely,

S. J. BARCAY  
Captain, MC, USN  
Head, Plannign and Special  
Projects  
Medical Corps Branch  
By direction of the Surgeon General

317  
317A  
3172  
3173  
3174  
317A

Exhibit "J"

A-43



Feb. 22 , 1974

Capt. S.J. Barcay  
Dept. of the NAVY  
Code 3173  
Bureau of Medicine & Surgery  
Washington, D.C.

Re: Frederick W. Silverman, M.D.  
Ser. No. 759390

Dear Capt. Barcay,

This note is to let you know that there has been a slight modification in my training plans for July 1974. Rather than attending the Roswell Park Memorial Hospital in Buffalo, New York beginning JULY 1, 1974, I will instead be going to New York City to assume a fellowship in Surgical Oncology at the Memorial Hospital for Cancer & Allied Diseases.

I will promptly have the director of the residency program at Memorial Hospital write to you indicating that I have been given an appointment there commencing July 1, 1974. If you will send me another training deferment form I will complete that also and forward it to Memorial Hospital for them to complete.

Sincerely,

*Frederick W. Silverman MD*

Frederick W. Silverman, M.D. (Lt., USNR, MC)

COMPLETED

Exhibit "K"

A-44

3/12



# RUSH

## ARMED FORCE, PHYSICIANS' APPOINTMENT AND RESIDENCY CONSIDERATION PROGRAM (Berry Plan)

### PART I - ~~TEST~~ FOR CONTINUED DEFERMENT (To Be Completed By Physician)

I hereby request that my active naval service be postponed to permit me to complete the two (2) years of residency training in Surgical Oncology.  
(Specialty)

In the event I elect to change specialty training; training hospital; or terminate my residency training for any reason, I will immediately notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

Frederick W. Silverman, MD

Lt. 052-32-1806

27622 Parkview Blvd.

RANK AND SOCIAL SECURITY NUMBER  
30 6 40 251

Warren, Mich. 48092

City and State

Selective Service Number

Frederick W. Silverman MD  
Signature of physician

# URGENT

### PART II - HOSPITAL AGREEMENT

The above physician has been accepted for further training in Surgical Oncology.  
(Specialty)

His residency training year will begin 7-1-74.  
(Month, Day, Year)

Length of approved training program in this specialty at this hospital is 2 years.

It is the understanding of this hospital that the active naval service of this physician will be postponed for the purpose of permitting him to complete residency training. This in no way binds the hospital for continued training should the physician prove unsatisfactory.

In the event the physician proves unsatisfactory or for any reason discontinues training in the above specialty, this hospital will notify the Bureau of Medicine and Surgery (Code 361), Navy Dept., Washington, D. C. 20390.

It is further understood that as a Naval Reserve officer on inactive duty, this physician receives neither pay nor allowances from the Armed Forces and is therefore eligible to accept the normal stipend paid residents by this institution.

MEMORIAL HOSPITAL

444 EAST 60th STREET, N.Y.C.

Street Address of Hospital

City and State

Naël Martini  
Signature of Hospital Official

Naël Martini, M.D.

Typed Name of Hospital Official

Director of Intramural Education 3/18

Date

Exhibit "L"

A-45



CONFIRM

THANK YOU

C-75  
AS OF

9/13/77  
MR. HOWARD

September 9, 1974

Dept. of the NAVY  
Code 3173  
Bureau of Medicine & Surgery  
Washington, D.C. 20372

Re: Frederick W. Silverman  
Ser. # 759390  
SS # 052-32-1806

Gentleman:

This is to confirm to you that I am currently a Fellow in the Department of Surgery at the Memorial Sloan-Kettering Cancer Center in New York City. The program here extends over a two year period, commencing July 1, 1974 and ending June 30, 1976. Naturally the hospital will complete any forms you deem necessary to verify my participation in the postgraduate fellowship program here. If it has not already been done, I wish to request that my deferment be extended through June 30, 1976, so that I may complete the program here.

I wish to also confirm to you my current address:

301 E. 69 St.  
Apt. 2L  
New York, New York 10021  
(212) 628-0107

Sincerely,

*Frederick W. Silverman MD*

Frederick W. Silverman, M.D.

Exhibit "M"

A-46



23 SEP 1974

Frederick W. Silverman, M.D.  
301 E. 69 Street  
Apartment 2L  
New York, New York 10021

Dear Doctor Silverman:

This is in response to your recent inquiry regarding the possibility of further deferment under the Berry Plan.

Because of the changing requirements of the naval service, the Navy's exact needs in July 1975 are not firm this far in advance; therefore, at this time we cannot advise you concerning active naval service.

In December of this year we shall communicate with you concerning your status. If you are to be called to active service, we shall so advise you at that time and solicit your duty preferences. If there is a chance that your services may not be needed, we shall advise you of that fact also and solicit your preferences for being called or not called.

Berry Plan physicians who will not be called to duty will be so advised in January 1975. For those who will be called, duty assignments will be made approximately 90 days prior to active duty.

I am sorry this response cannot be more definite.

Sincerely,

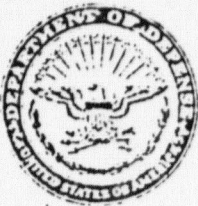
S. J. BARCAY  
Captain, MC, USN  
Head, Assignment and Distribution -  
Specialists  
Medical Corps Branch  
By direction of the Surgeon General

COMPLETED

Exhibit "M"

A-47





DEPARTMENT OF THE NAVY  
BUREAU OF MEDICINE AND SURGERY  
WASHINGTON, D.C. 20372

IN REPLY REFER TO

BUMED-3174-bja  
29 October 1974

Fredarick W. Silverman, M.D.  
301 East 69th Street, #2-L  
New York, N.Y. 10021

Dear Doctor Silverman:

This is to furnish information concerning your military status.

Records of this Bureau indicate you are in your last year of deferment under the Berry Plan. Normally, you would be considered as available for active service soon after your training is completed. However, there is a remote possibility that some officers in your specialty may be in excess of our current requirements. Therefore, we are requesting that you complete the attached "Berry Plan Option Sheet" and return it to this Bureau as soon as possible. This will enable us to have information available should it become fact that our requirements allow us to grant an option that would obviate call to active duty upon completion of your present training period.

You are requested to complete and also return the enclosed active duty questionnaire attached to a current curriculum vitae which includes a listing of papers published, those working but not yet completed. In the event you are selected for active naval service your questionnaire and the attachments will permit us to consider your duty preferences.

It is presently planned that a board of officers will meet in this Bureau on or before 6 January 1975 to consider the above matter. Soon thereafter you will be advised of the final action taken in your case.

It is possible that a limited number of teaching assignments will be available for some Berry Plan doctors in some specialties. In order that we can evaluate your qualifications for such assignment, if available, it is requested that you present the enclosed evaluation sheet to your Chief of Service and ask that he complete and return it to this Bureau in the pre-addressed envelope provided.

Sincerely,

*S. J. Barclay*  
S. J. BARCLAY

Captain, MC, USN

Head, Assignment and Distribution -  
Specialists

Medical Corps Branch

By direction of the Surgeon General

Exhibit "O"

A-48



65

November 4, 1974

Capt. S.J. Barcay  
Head, Assignment & Distribution-Specialists  
Medical Corps Branch

Re: Frederick W. Silverman, M.D.  
301 E. 69 St.  
New York, New York 10021  
SS # 052-32 1806

Enclosed find a brief current curriculum vitae as you requested  
in BUMED-3174-bja dated 29 October 1974.

Sincerely,

Frederick W. Silverman MD.

Exhibit "P"

A-49



Name: Frederick W. Silverman, M.D.

S.S. # 052 32 1806

Address: 301 E. 69 Street  
Apt. 2L  
New York, New York 10021

Service # 759390

Age: 34

Date of Birth: Mar. 18, 1940

Marital Status: married

Children: wife currently pregnant

Educational Background:

Univ. of Michigan, Ann Arbor

9/57 to 6/61

BS(Mathemat

Univ. of Michigan, Ann Arbor

6/61 to 6/63

MS(Mathemat

New York Medical College,  
New York, NY

9/65 to 6/69

MD

Post-Graduate Training:

Albert Einstein College Med, NY

Internship

7/1/69-6/30

Albert Einstein College Med, NY

1st Yr Surg  
Residency

7/1/70-6/30

Henry Ford Hosp, Detroit

2-3Yr Surg  
Residency

7/1/71-6/30

Henry Ford Hosp, Detroit

Chief Surg.  
Resident

7/1/74-6/30

Memorial Sloan Kettering Cancer  
Center, New York, NY (MSKCC)

Fellow, Surgical  
Oncology, Head &  
Neck Surgery

7/1/74-6/20

American Cancer Society Research  
Fellow(concurrent with appointment  
at MSKCC)

7/1/74-6/30

Work Experience:

Radio Corp. of America,  
Cocoa Beach, Florida

Applied Mathemati-  
cian/Systems An- 7/63-8/6  
alyst-Eastern Test  
Range

Florida Institute of Technology,  
Melbourne, Florida(formerly Bre-  
vard Engineering College)

Instructor Applied 7/63-8/6  
Mathematics

A-50



Awards & Professional Societies:

Teaching Fellow, Univ. of Michigan, Ann Arbor, Michigan 6/61-6/63

Member Detroit Surgical Association

Candidate Group Member American College Surgeons

Board Eligible, American Board of Surgery (Part I to be taken  
Dec. 4, 1974, Part II April of June '75)

A-51



## BERRY PLAN OPTION SHEET

NAME: (print) FREDERICK W. SILVERMAN M.D.SPECIALTY: GENERAL SURGERY, SURGICAL ONCOLOGY

In the event that some officers in my specialty may not be called to active service under the Berry Plan upon completion of training, it is my preference:

(Indicate preference as "1" through "5" according to numerical order in which most desired).

- 3 to be called to active naval service on JULY 1, 1976.
- 2 to be granted an additional year of deferment (1975-1976) for training in the specialty of SURGICAL ONCOLOGY (HEAD & NECK SURG)
- 1 to be placed in Group II of the Berry Plan (if not already therein) and not called to active service upon completion of training (in this instance, if not already accomplished, I will sign an agreement to remain in the Ready Reserve for a minimum period of three years during which time I will be available for active service to meet emergency needs).
- 4 to be released from my Navy commission for duty in another service where needed.
- 5 to serve on active duty NOT in a specialty.

You should be aware that the preferences you state above can only be considered advisory. While every effort will be made to honor them, the requirements of the service dictate the Medical Corps needs and the number of specialists to be brought on active duty.

Frederick W. Silverman MD  
Signature

Nov. 1, 1974  
Date

Exhibit "Q"

A-52



## QUESTIONNAIRE FOR FULLY TRAINED SPECIALISTS

DATE NOV. 1, 1974NAME SILVERMAN FREDERICK W LT. AGE 34  
(Last) (First) (Middle)PRESENT ADDRESS 301 E. 69 ST. NEW YORK NY 10021TELEPHONE (use area code) HOME 212 628-0107 OFFICE 212 TR 9-3000SPECIALTY GENERAL SURGERY SUBSPECIALTY HEAD & NECK SURG  
SURGICAL ONCOLOGYSOCIAL SECURITY NO: 052-32-1806 MARRIED ☒ AGES OF CHILDREN WIFE  
PREGNANTMEDICAL SCHOOL GRADUATION (exact date) 6 - 3 - 69  
(day) (month) (year)DUTY PREFERENCES (indicate by #1, #2 and #3) (A) SEA 2 (B) OVERSEA 3 (C) SHORE 1GEOGRAPHIC AREA REQUESTED FOR ASSIGNMENT ① ORLANDO, FLA; ② PENSACOLA,  
FLA; ③ CORPUS CHRISTI, TEX ④ KEY WEST, FLA ⑤ PORTSMOUTH, VA.SIGNIFICANT CHANGES IN PHYSICAL CONDITION SINCE COMMISSIONED (if any) NONEPERSONAL CONSIDERATION AFFECTING ASSIGNMENT (health of wife/children) NONE

COMMENTS

EXACT DATE OF COMPLETION OF TRAINING 3 30 6 76  
(day) (month) (year)EXACT DATE DESIRED FOR ACTIVE DUTY TO COMMENCE 7/1/76Frederick W. Silverman MD  
SIGNATURE

## NOTICE

UNTIL ACTIVE DUTY ORDERS ARE RECEIVED AND YOU HAVE BEEN FOUND QUALIFIED FOR  
ACTIVE SERVICE DO NOT MAKE ANY IRREVOCABLE PERSONAL PLANS BASED UPON ACTIVE  
SERVICE (SUCH AS SIGNING OR BREAKING LEASES OR MOVING DEPENDENTS).

Exhibit "R"

A-53



BUMED:3174:rrh

4 December 1974

FROM: Chief, Bureau of Medicine and Surgery

TO: LT Frederick W. SILVERMAN, MC USNR  
301 East 69th Street, #2-L  
New York, NY 10021

SUBJ: Deferment for residency training (BERRY PLAN, NADDS)

ENCL: (1) Request for continued deferment  
(2) Self-addressed envelope

1. Your deferment has been approved for the sixth year of residency training in General Surgery, beginning 1 July 1975.
2. Barring the occurrence of some unforeseen event such as accelerated mobilization or your discontinuance of training, your deferment will end on 30 June 1976.
3. To provide the necessary recording document to effect this delay, it is requested that you complete Part I of enclosure (1), have Part II Hospital Agreement, properly filled out, authenticated and return the original to this Bureau immediately. One copy of the form is for your files, and one copy is for the hospital files. In the event it is not possible for you to continue in residency training, please return the form, indicating the reason thereon.
4. The self-addressed envelope is for your convenience in returning this form promptly.

*J.N. Trone*  
J.N. TRONE  
By direction

Exhibit "S"

A-54



BUMED-3174-jfh

6 DEC 1974

Frederick W. Silverman  
301 East 69th Street  
New York City, New York 10021

Dear Doctor Silverman:

Thank you for your prompt reply to our recent correspondence regarding your active duty status under the Berry Plan.

I am pleased to advise you that your request for active service in July 1976 rather than July 1975 has been approved. The necessary notation has been made a part of your file at this Bureau.

I trust that this will be of service to you.

Sincerely,

S. J. BARCAY  
Captain, MC, USN  
Head, Assignment and Distribution -  
Specialists  
Medical Corps Branch  
By direction of the Surgeon General

317  
3171  
3172  
3173  
3174  
317A

COMPLETED

Exhibit "T"

A-55



NAVY'S ACT. DUTY DELAY PROGRAM FOR SPECIALISTS  
(BERRY PLAN, NADDS)

PART I - REQUEST FOR CONTINUED DEFERMENT (To Be Completed By Physician)

I request that my active naval service be postponed to permit me to complete the 2 year of ~~residency~~ <sup>FELLOWSHIP</sup> training in SURGICAL ONCOLOGY.

(YEAR LEVEL)

(SPECIALTY)

In the event I desire to change specialty; training hospital; or terminate my residency training for any reason, I will immediately notify the Bureau of Medicine and Surgery (Code 3174), Navy Dept., Washington, DC, 20372. I understand that in the event permission is not granted to change specialty or hospital, or if I discontinue training in the specialty for which deferred, I will be considered as available for immediate active service.

FREDERICK W. SILVERMAN MD

NAME OF PHYSICIAN

LT 052 32 1806

RANK AND SOCIAL SECURITY NUMBER

301 E. 69 ST APT. 2L

STREET ADDRESS OF PHYSICIAN

30 6 4 251

SELECTIVE SERVICE NUMBER

NEW YORK, NY 10021

CITY and STATE

Frederick W Silverman MD

SIGNATURE OF PHYSICIAN

PART II - HOSPITAL AGREEMENT

The above physician has been accepted for further training in SURGICAL ONCOLOGY

(SPECIALTY)

His or her first (or next) training year will begin 7-1-75

(MONTH, DAY, YEAR)

It is the understanding of this hospital that the active naval service of this physician will be postponed for the purpose of permitting him, or her to complete residency training. This in no way binds the hospital for continued training should the physician prove unsatisfactory.

In the event the physician proves unsatisfactory or for any reason discontinues training in the above specialty, this hospital will notify the Bureau of Medicine and Surgery (Code 3174), Navy Dept., Washington, DC 20372.

It is further understood that as a Naval Reserve officer on inactive duty, this physician receives neither pay nor allowances from the Armed Forces and is therefore eligible to accept the normal stipend paid residents by this institution.

Memorial Hospital for Cancer and Allied Diseases

NAME OF HOSPITAL

Nael Martini  
SIGNATURE OF HOSPITAL OFFICIAL

1275 York Avenue, New York, N.Y. 10021

STREET ADDRESS OF HOSPITAL

Nael Martini, M.D.

TYPED NAME OF HOSPITAL OFFICIAL

12/12/74

DATE

CITY and STATE

Exhibit "u"

A-56





DEPARTMENT OF THE NAVY  
BUREAU OF MEDICINE AND SURGERY  
WASHINGTON, D.C. 20372

IN REPLY REFER TO

BUMED-314-bja

31 October 1975

Frederick W. Silverman, M.D.  
301 E 69 Street #2L  
New York, N. Y. 10021

Dear Doctor Silverman:

This is to furnish information concerning your military status.

Records of this Bureau indicate that you are in your last year of deferment under the Berry Plan. Therefore, you are scheduled to come on active duty soon after your training is completed.

To assist the assignment officers in making your duty assignment, you are requested to complete the enclosed questionnaire and return it to this Bureau as soon as possible. Please attach to it a current curriculum vitae. A limited number of teaching assignments will be available for Berry Plan doctors in some specialties. In order that we can evaluate your qualifications for such assignments it is requested that you present the enclosed evaluation sheet to your Chief of Service and ask that he complete and return it in the envelope provided.

It is anticipated your assignment will be selected and your orders issued approximately 60 days in advance of your active duty date.

I trust that you will find your tour of active duty to be interesting and professionally rewarding.

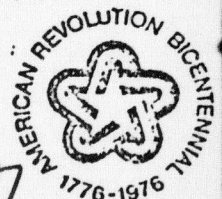
We look forward to welcoming you aboard as a member of the Navy Medical Corps.

Sincerely,

S. J. BARCLAY  
Captain, MC, USN  
Head, Assignment and Distribution -  
Specialists  
Medical Corps Branch  
By direction of the Surgeon General

Exhibit "V"

A-57





*Repts*

CO

CO

FREDERICK W. SILVERMAN, M. D.  
SURGICAL ONCOLOGY  
HEAD & NECK, BREAST AND GASTROINTESTINAL TRACT

GS

9 November 1975

Capt. S. Barcay  
Dept. of the NAVY  
Bureau of Medicine and Surgery  
Washington, D.C. 20372

Dear Capt. Barcay,

Enclosed find the questionnaire and curriculum vitae you requested on BUMED-314-bja dated 31 October 1975.

I would appreciate your letting me know as soon as possible whether or not the NAVY plans to call me to active duty July 76. It is not possible for me to make arrangements to enter private practice until I definitely know that I will not be entering the NAVY in July.

If I am being called to active duty, I think it would be of mutual benefit to both the NAVY and myself if I could serve in my specialty in a teaching hospital. On the questionnaire form for trained specialists I have indicated the places I would prefer to serve in order of preference. San Diego is my first choice as they seem to have both an active surgery department and oncology service. I realize that positions at the locations I have requested may or may not be available in July 75. I hope, however, that it will be possible to satisfy the NAVY's manpower needs and my preferences simultaneously.

Sincerely,

*F. W. Silverman MD*  
Frederick W. Silverman, M.D.

Exhibit "W1"

A-58



314

QUESTIONNAIRE FOR FULLY TRAINED SPECIALISTS

DATE Nov. 10, 1975

NAME Silverman Frederick W. RANK LCDR AGE 35  
(Last) (First) (Middle)

PRESENT ADDRESS 301 E. 69 Street New York, New York 10021

TELEPHONE (area code) 212 HOME 628-0107 OFFICE TR 9 3000

SOCIAL SECURITY NO: 052-32-1806 MARRIED Yes AGES OF CHILDREN 8 mo.

MEDICAL SCHOOL GRADUATION (exact date) 3 6 69  
(day) (month) (year)

SPECIALTY General Surgery SUBSPECIALTY Oncology CERTIFICATION American  
Board of Surgery

DUTY PREFERENCES (indicate by 1, 2 and 3) SEA 3 OVERSEA 2 SHORE 1

GEOGRAPHIC AREA REQUESTED FOR ASSIGNMENT 1. San Diego 2. Portsmouth Va  
3. Jacksonville, Florida 4. Key West Florida 5. Orlando 3, Florida  
(choices listed in order of preference)

SIGNIFICANT CHANGES IN PHYSICAL CONDITION SINCE COMMISSIONED (if any) None

PERSONAL CONSIDERATION AFFECTING ASSIGNMENT (health of wife/children) \_\_\_\_\_

COMMENTS Prefer assignment to teaching hospital where I can do both  
General Surgery and Head & Neck Surgery

EXACT DATE OF COMPLETION OF TRAINING 30 6 76  
(day) (month) (year)

EXACT DATE DESIRED FOR ACTIVE DUTY TO COMMENCE 1 7 76  
(day) (month) (year)

NOTICE

UNTIL ACTIVE DUTY ORDERS ARE RECEIVED AND YOU HAVE BEEN FOUND QUALIFIED FOR ACTIVE SERVICE DO NOT MAKE ANY IRREVOCABLE PERSONAL PLANS BASED UPON ACTIVE SERVICE (SUCH AS SIGNING OR BREAKING LEASES OR MOVING DEPENDENTS).

Frederick W. Silverman MD

Exhibit W2

SIGNATURE

A-59



FREDERICK W. SILVERMAN, M. D.  
SURGICAL ONCOLOGY  
HEAD & NECK, BREAST AND GASTROINTESTINAL TRACT

Brief Curriculum Vitae

Name: Frederick W. Silverman, M.D.

Address: 301 E. 69 Street  
Apt. 2L  
New York, New York 10021

Age: 35 Date of Birth: 3/18/ 40

Marital Status: married Children: one(1)

Educational Background:

Univ. of Michigan, Ann Arbor	9/57 to 6/61	BS(Mathematics)
Univ. of Michigan, Ann Arbor	6/61 to 6/63	MS(Mathematics)
New York Medical College New York, NY	9/65 to 6/69	MD

Post Graduate Training:

Albert Einstein College Med., NY	internship	7/1/69-6/30/70
Albert Einstein College Med., NY	1st Yr Surg Residency	7/1/70-6/30/71
Henry Ford Hospital, Detroit	2-3Yr Surg Residency	7/1/71-6/30/73
Henry Ford Hospital, Detroit	Chief Surg Resident	7/1/73-6/30/74
Memorial Sloan-Kettering Cancer Center, New York	Fellow, Surgi- cal Oncology & Head/Neck Surg.	7/1/74-6/30/76
American Cancer Society Resaerch Fellow(concurrent with appt at MSKCC)		7/1/74-6/30/76

Work Experience:

Radio Corp of American, Cocoa Beach, Florida	Applies Mathema- tician/Systems Analyst-Eastern Test Range	7/63 - 8/65
Florida Institute of Technology Melbourne, Fla(formerly Bre- vard Engineering College)	Instructor, Ap- plied mathematics	7/63 - 8/65

Exhibit "W3"

A 60



Professional Status:

Diplomat National Board of Medical Examiners

Diplomat American Board of Surgery (certified by the  
American Board of Surgery 10/1/75)

Candidate Group. American College of Surgeons

Associate Member Detroit Surgical Association.

Associate Member American Medical Association

A-65



FREDERICK W. SILVERMAN, M. D.  
SURGICAL ONCOLOGY  
HEAD & NECK, BREAST AND GASTROINTESTINAL TRACT

8 December 1975

Capt. S.J. Barcay  
Dept. of the NAVY  
Bureau of Medicine & Surgery  
Washington, D.C. 20372

Dear Capt. Barcay,

Over the past two weeks I have for one reason or another been unsuccessful in reaching you by phone. Either your line has been busy, you have been out of the office, you have been away, you have been talking on another line, etc. etc.

I need some information, and I hope you would be considerate enough to promptly supply me with it, if you can. Specifically I want to know the following:

- (1) will the NAVY be calling me to active duty in July '76 or will it NOT be calling me to active duty?
- (2) if you cannot answer this because your manpower needs are not defined yet, or for other reasons, can you please give me an approximate guess as to whether or not I will be called up?
- (3) in the event the NAVY is calling me up for active duty, is it to my benefit to discuss with you assignments now, or must I simply wait indefinitely before I have any idea of where I am to be assigned?

I am fully aware that from Berry Planners and others you are constantly bothered, cajoled, and annoyed with placement requests, favors, etc. On the other hand, it is not possible for me even to make tentative plans to enter practice unless I know that I am not being called up in July or that there is a reasonable chance I will not be called up.

Give a nervous and anxious surgeon a break, and try and provide me as best you can with answers to my questions.

Thank you.

*FW Silverman, M.D.*

Frederick W. Silverman, M.D.  
301 E. 69 St  
New York, New York 10021

Exhibit "X"

A-62



BUMED-3112-mjm

22 DEC 1975

Frederick W. Silverman, M.D.  
301 East 69th Street  
New York, NY 10021

Dear Doctor Silverman:

This is in reply to your letter of 8 December 1975. I am sorry that you have had such difficulty in reaching me by telephone, but I am sure that you can understand that this season of the year is an extremely busy one for me, with multiple telephone calls, much correspondence, and many conferences. I will try to take up each of your questions in order.

It is our intention at this time to nominate you for orders to active duty in the Summer of 1976. We do not intend to release any surgeons from their Berry Plan obligation. I have reviewed the questionnaire which you sent in, indicating your choices of duty station as well as providing us with other essential information. We will give your request for assignment every possible consideration, but of course as in all such matters, the requirements of the Navy must prevail.

I hope that this has eased your anxiety somewhat, by indicating our intention to call you to active duty. If you have any further questions, please contact me again. For your information, I will not be in Washington for the remaining part of December, or for the first two weeks in January. The assignment selections will begin shortly thereafter, and we hope to have completed them by the end of February. Soon thereafter, you will receive a letter of nomination from us indicating which duty station has been selected for you, and other information which will be of use to you in making your plans for the Summer.

Sincerely,

S. J. BARCAY  
Captain, MC, USN  
Head, Medical Corps Placement  
and Distribution Branch  
By direction of the Surgeon General

3117  
3111  
3112  
3113  
3114

Exhibit "Y"

A-63

BEST COPY AVAILABLE





DEPARTMENT OF THE NAVY  
BUREAU OF MEDICINE AND SURGERY  
WASHINGTON, D.C. 20372

IN REPLY REFER TO

BUMED-J14-bja  
23 March 1976

Frederick W. Silverman, M.D.  
301 E. 69 Street  
New York, NY 10021

Dear Doctor Silverman:

This letter is in further reference to your status in the Navy Medical Corps Reserve.

I am pleased to advise you or to confirm as the case may be, that consistent with the needs of the Navy, you are scheduled for active service as noted at the bottom of this letter.

The needs of the Navy are subject to change without notice. Therefore, the assignment noted in this letter should be considered as tentative at this time. You are cautioned not to make any irrevocable personal plans based upon this assignment (such as signing leases, or moving your family or personal effects) until such time as official orders are received from the Chief of Naval Personnel. We shall make every effort to have your orders delivered to you as early as possible.

It is hoped the information provided herein will be of service to you.

Sincerely,

S. J. BARCAY  
Captain, MC, USN  
Head, Assignment and Distribution  
Medical Corps Branch  
By direction of the Surgeon General

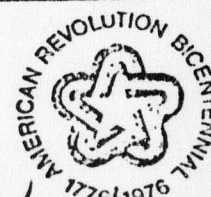
Reporting date: 7 July 1976

Indoctrination (about 10 days): Naval Base, Norfolk, VA

Permanent assignment: Naval Regional Medical Center, Orlando, FL

Exhibit "Z"

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PCNWD-314-108  
APR 23 1976

FIRST ENDORSEMENT on Mr. Steven J. Hyman's ltr with enclosure of 8 Apr 1976

From: Chief, Bureau of Medicine and Surgery  
To: Chief of Naval Personnel

Subj: LT Frederick Silverman, MC, USNR, 052-32-1806/2105

1. Forwarded as a matter under your purview.
2. It is recommended that Doctor Silverman's request for release from his active duty obligation not be approved. In July 1976 there will be an urgent need for his services at the Naval Regional Medical Center, Orlando, Florida.
3. Copies of relevant correspondence this Bureau has had with Doctor Silverman since his appointment on 4 November 1969 are enclosed.

J. E. CARR  
By direction

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VF-1251

Exh. "Z-1"

A-65



THE DISTRICT COURT OF THE UNITED STATES

FREDERICK W. SILVERMAN

Plaintiff,

v.

J. WILLIAM MIDDENDORF, II,  
SECRETARY OF THE NAVY;  
COMMANDING OFFICER, BUREAU  
OF MEDICINE AND SURGERY,  
UNITED STATES NAVY,

Defendants.

AFFIDAVIT

Comes now affiant, and first being duly sworn, states upon his oath as follows, to wit:

THAT I am John E. Corcoran, Jr., Executive Secretary of the Board for Correction of Naval Records, Department of the Navy, Washington, D.C., created pursuant to 10 U.S.C. § 1552, and 32 Code of Federal Regulations 723;

THAT all records of application for relief addressed to the Board for Correction of Naval Records are within the custody and cognizance;

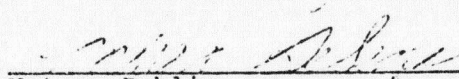
THAT petitioner in this case, LT Frederick W. Silverman, MC, USNR, 052 32 1806, does not now have an application for any kind of relief pending before the Board for Correction of Naval Records, nor has he ever in the past made application for any kind of relief.



JOHN E. CORCORAN, JR.  
Executive Secretary, Board for  
Correction of Naval Records

Subscribed and sworn to before me

this 21st day of June, 1976.

  
Notary Public

*My commission expires 12-20-78*

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1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 FREDERICK W. SILVERMAN, )

4 Plaintiff, )

5 v. )

Civil No. 76C-2708

6 J. WILLIAM MIDDENDORF, II, )  
7 SECRETARY OF THE NAVY, and )  
8 COMMANDING OFFICER, BUREAU )  
9 OF MEDICINE AND SURGERY, )  
10 UNITED STATES NAVY, )

11 Defendants. )

12 AFFIDAVIT

13 I, D. J. Brideau, being duly sworn, upon oath, depose and  
14 state as follows:

15 1. I am a Commander in the United States Navy Medical  
16 Services Corps and am presently assigned as Head, Medical  
17 Department Officer, Distribution Section, Bureau of Naval  
18 Personnel (Pers 4415), Washington, D.C. 20370.

19 2. Among the responsibilities of my present position is  
20 the issuance of orders to effect the assignments of duty  
21 stations for medical officers.

22 3. Active duty orders were issued for Lieutenant Commander  
23 Frederick W. Silverman to report to Commander in Chief, U. S.  
24 Atlantic Fleet, Norfolk, Virginia not later than 1600 July 7,  
25 1976, and not earlier than July 6, 1976, for approximately two  
26 weeks indoctrination, and then to proceed and report to  
27 Commanding Officer, Naval Regional Medical Center, Orlando,  
28 Florida.

29 4. On April 6, 1976, Doctor Silverman requested release  
30 from his active duty commitment based on reasons of age and  
31 personal hardship. After a careful review by a board authorized  
32 by the Chief of Naval Personnel, Lieutenant Commander Silverman's

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1 request was not approved since the hardship reasons set forth  
2 in his request were determined not to be of such severity as  
3 to warrant cancellation of his active duty obligation.

4 5. Although the commanding officer may exercise discretion  
5 according to the needs of the medical center, Lieutenant  
6 Commander Silverman under normal circumstances will be assigned  
7 duties within his specialty of general surgery. The require-  
8 ment for Doctor Silverman's services at Orlando has been  
9 validated and his services are urgently required to fill an  
10 authorized general surgeon's billet at the Naval Regional  
11 Medical Center, Orlando, Florida.

12  
13 D. J. Brideau  
D. J. BRIDEAU

14  
15 SWORN AND SUBSCRIBED TO BEFORE ME

16 THIS 2nd DAY OF July, 1976.

17  
18 M. J. Silverman  
NOTARY PUBLIC

19 MY COMMISSION EXPIRES ON 12-30-79



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
FREDERICK W. SILVERMAN,

Plaintiff,

-against-

J. WILLIAM MIDDENDORF, II,  
SECRETARY OF THE NAVY, and  
COMMANDING OFFICER,  
BUREAU OF MEDICINE and SURGERY,  
UNITED STATES NAVY,

Defendants.

:  
:  
: SUPPLEMENTAL  
: AFFIDAVIT

: 76 Civ. 2708 (DEB)

-----X  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

GARY G. COOPER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York. I am in charge of this case for my office and I make this affidavit to supplement my reply affidavit in opposition to plaintiff's order to show cause dated July 8, 1976.

2. Plaintiff's Reply Memorandum includes several references to documents and material which, we believe, have not been placed in the record of these proceedings with full explanation of their relevance. The following summary of that material is intended to clarify the record and serve the convenience of this Court.

3. Upon information and belief plaintiff's attorney contacted the Department of Defense on or about July 12, 1976 and requested all additional material with respect to the Department of Navy Berry Plan (the "Plan"). During his discussion with the Defense Department, plaintiff's counsel expressed specific interest in any documents evidencing

68 A-69



implementation of the Plan.

In response to counsel's request, the Department of Navy (the "Navy") forwarded to my office a January 5, 1966 "MEMORANDUM FOR THE ASSISTANT SECRETARY OF DEFENSE (MANPOWER), a copy of which is attached hereto as Exhibit "Z-2, which provides, inter alia:

"The Chief of Naval Personnel advises that instructions required to offer allocated physicians the opportunity to apply for Reserve commissions and to ascertain their desire as to time of entry on active duty is contained in the U. S. Navy Recruiting Manual."

4. Upon information and belief, the Recruiting Manual referred to in Exhibit "Z-2" is entitled COMNAVCRUITCOM INSTRUCTION 1110.A (CRUITMAN-OFF), a copy of which is attached hereto as Exhibit "Z-3". As indicated in Exhibit "Z-2", the manual contains the relevant instructions for the Navy with respect to the Navy's authority for the Berry Plan.

5. The Navy also forwarded to my office on July 19, 1976, a copy of the Navy "EUPERS NOTICE 1120", dated May 11, 1965, a copy of which is attached hereto as Exhibit "Z-4". This notice contains additional information regarding procedures for the 1967 Berry Plan. Although the relevance of this document is somewhat doubtful in that it specifically states that it relates to the Fiscal Year 1967, it may, nevertheless, prove helpful to the Court. More important, plaintiff cites the document at page 6 of his Reply Memorandum.

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2

6. The parties have also referred to Department of Defense Instructions No. 1120.2 and 1205.1, copies of which are attached hereto as Exhibits Z-5 and Z-6 respectively.

Instruction No. 1120.2 is a general outline of the Berry Plan as sponsored by the Department of Defense and the Selective Service System and states that it "permits participating physicians to be brought to active duty in fulfillment of their obligation for military duty at mutually acceptable times."

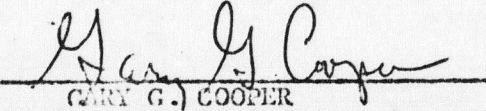
The express purpose of Instruction No. 1205.1 is to implement the provisions of § 454 with "reference" to other pertinent regulations, including the Berry Plan. The Instruction specifically includes the language of § 454(e)(4) under the caption "ORDERING COMMISSIONED PERSONNEL TO ACTIVE DUTY".

"E. Any physician or dentist who meets the qualifications for a reserve commission in the respective military departments shall, so long as there is a need for his services, be afforded an opportunity, pursuant to subsection (4)(1)(4), Universal Military Training and Service Act, as amended, to volunteer for a period of active duty for not less than 24 months." [Id., p. 11]

7. Reference is made to the House Armed Services Committee Report No. 394 throughout plaintiff's reply memorandum. (Plaintiff's Reply Memorandum, pp. 3, 4 and 6.) Although this report is a public document, it is very difficult to secure, thus a copy of the complete report is attached hereto as Exhibit "Z-6" for the convenience of the Court.

Sworn to before me this  
27th day of July 1976

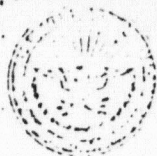
Notary Public

  
GARY G. COOPER  
Assistant United States Attorney

RALPH L. LEE  
Notary Public, State of New York  
No. 41-220288 Queens County  
Term Expires March 30, 1977

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DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20350

5 - JAN 1966

MEMORANDUM FOR THE ASSISTANT SECRETARY OF DEFENSE  
(MANPOWER)

Subj: Armed Forces Physicians' Appointment and Residency Consideration Program

Ref: (a) DOD Instruction 1120.2 of 16 September 1965, same subject

The Chief of Naval Personnel advises that instructions required to offer allocated physicians the opportunity to apply for Reserve commissions and to ascertain their desire as to time of entry on active duty is contained in the U. S. Navy Recruiting Manual.

Further, the Chief, Bureau of Medicine and Surgery (Code 36) will advise the Deputy Assistant Secretary of Defense (Manpower-Health and Medical) of the names of physicians who have accepted Reserve commissions and who are to be deferred. The Chief, Bureau of Medicine and Surgery will also ascertain who is to be continued in a deferred status after 1 July of each year and he will submit an annual report of the names of such Reserve officers to the Deputy Assistant Secretary of Defense (Manpower-Health and Medical).

No further Department of the Navy implementation of reference (a) is considered necessary at this time.

*Robert H. B. Baldwin*

ROBERT H. B. BALDWIN  
Under Secretary of the Navy

11-1082

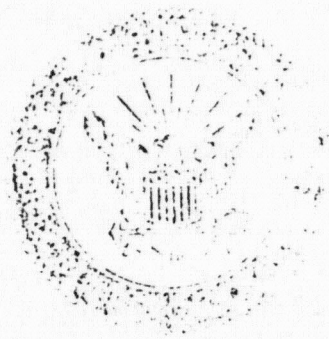
A-71a

EXHIBIT "Z-2"

BEST COPY AVAILABLE

NAVY RECRUITING COMMAND.

REFLECT



COMNAVCRUITCOM INSTRUCTION 1115.A  
(CONTINUED)

NAVY RECRUITING COMMAND  
1515 WILSON BLVD  
ARLINGTON, VIRGINIA 22203

EXHIBIT "2-3"  
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CHAPTER V

SECTION G

NAVY'S ACTIVE DUTY DELAY FOR SPECIALISTS (NADDS) PROGRAM

MEDICAL CORPS, NAVAL RESERVE, 2105, INACTIVE DUTY

V-G-1. GENERAL. This program leads to appointment in the Medical Corps, U. S. Naval Reserve, for inactive duty while completing civilian residency training or research projects. Upon completion of training, participants will be required to serve on active duty.

V-G-2. ELIGIBILITY REQUIREMENTS

- a. Sex - Male or female
- b. Citizenship - U. S. citizen
- c. Age - 21 to 41
- d. Education

(1) Graduate of a medical school approved by the American Medical Association, or licensed to practice in a state, territory, the District of Columbia, or Puerto Rico, or be permanently certified by the Educational Council for Foreign Medical Graduates.

(2) Graduate of a school of Osteopathy approved by the American Osteopathic Association whose graduates are eligible for licensure to practice medicine or surgery in a majority of the states, and who are licensed to practice medicine, surgery or osteopathy in a state, territory or the District of Columbia.

e. Professional Experience - Completion of approved internship or equivalent training program in the United States, Puerto Rico or Canada as a minimum requirement. Selected candidates can be appointed while in intern or residency training.

f. Test - None required.

g. Dependency Status

(1) Male - No restrictions

(2) Female - Must meet dependency criteria outlined in Chapter I, Section A-10.

V-75

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h. Physical Requirements - Must be found physically qualified for appointment in the Medical Corps by the Chief, Bureau of Medicine and Surgery, in accordance with standards established in the Manual of the Medical Department.

V-G-3. SOURCE

a. Civilians, including physicians undergoing residency training in specialties for which projected requirements exist.

b. Unrestricted Line, Medical Students 19x5 (Inactive). Students who participated in the Senior Medical Student Program or the Navy Medical/Osteopathic Scholarship Program are not eligible to apply. Students in the Armed Forces Health Professions Scholarship Program can apply; however, their applications will be considered only if the training they wish to pursue is not available in a Naval hospital.

c. Personnel of Reserve components of other Armed Forces provided appropriate contingent release is authorized.

d. Personnel of the Naval Reserve.

V-G-4. SPECIALTY DISTRIBUTION AND PERIOD OF DEFERMENT.

Specialty distribution of those officers granted delays in active duty to pursue training shall be determined by the Surgeon General of the Navy. The period of delay in each case shall be that period of time required to complete American Board training requirements in the specialty in the hospital concerned. Deferments shall be granted for one year at a time by the Chief, Bureau of Medicine and Surgery until the training requirements have been met.

V-G-5. STATUS AND TRAINING. Physicians appointed and authorized a delay to complete specialty training will be assigned to the active status pool of the Ready Reserve. While assigned to the pool, they may voluntarily participate in paid active duty for training subject to requirements. Such individuals, however, will not be assigned to units of the Selected Reserve while in residency training status.

V-G-6. SERVICE OBLIGATION

a. Retain commission in Naval Reserve for six years, the first five of which shall be in a Ready Reserve status. Participants must agree that upon completion of training or upon discontinuance of training in the specialty for which



selected, they will serve on active duty for two years unless obligated for a longer period as a result of participation in other programs. While in training, participants will not be called to active service except in the event of war or national emergency declared by the President or by Congress.

b. Upon receipt of active duty orders, any reserve officer and/or his employer may submit a request for a delay in entrance on active duty and/or exemption from active duty to a board authorized by the military department concerned to consider such cases. If such action results in disapproval, when the request is based on alleged community essentiality or hardship, the officer and/or his employer may submit an appeal to a higher authority within the military department concerned for a final determination of the matter.

V-G-7. CHANGES OF SPECIALTY. Changes of specialty under this program will be permitted only if there is a vacancy under the program in the specialty to which the participant desires to change. Change of specialty requests should be addressed to the Chief, Bureau of Medicine and Surgery (Code 3174), Navy Department, Washington, D. C. 20372. 1

V-G-8. PROCESSING. Applications for the Navy's Active Duty Delay for Specialists (NADDS) (2105 Inactive Duty) Program may be submitted at any time, provided the individual shows evidence of having been offered Active Duty Delay by the Chief, Bureau of Medicine and Surgery. (Active Duty Delay is contingent upon qualifying for and acceptance of commission as 2105, Medical Corps, Naval Reserve.)

V-G-9. APPLICATION DOCUMENTS REQUIRED. (Refer to notes in Chapter I, Section II.)

a. Advance documents to be forwarded:

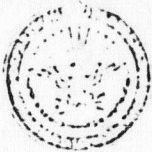
<u>DOCUMENT TITLE</u>	<u>FORM NO.</u>
Report of Medical Examination (See Note 1)	SF 88
Report of Medical History (See Note 1)	SF 93
NAC Request (See Note 2)	DD 1584
Fingerprint Cards (2) (See Note 3)	FD 258

b. The following documents are to be included in the completed application in addition to those documents listed in section IX-B-2:

<u>DOCUMENT TITLE</u>	<u>FORM NO.</u>
Medical/Dental School Computation PEBD	NAVCRUIT 1110/83
Medical Internship Computation PEBD	NAVPERS 1110/84
Medical Officer Active Duty Questionnaire	NAVCRUIT 1120/50
Service Agreement	NAVCRUIT 1140/2
Block 44 of Application Control and Processing Record - Indicate application is for "2105 Inactive NADDS"	

c. Refer to Chapter IX, Section B-3 for documents to be submitted, if applicable to the requirements of this program and the individual qualification/eligibility of the applicant.





DEPARTMENT OF THE NAVY  
BUREAU OF NAVAL PERSONNEL  
WASHINGTON D C 20370

NAVERS 1120  
DIRECTOR TO  
Pern-B623-fg1  
26-65  
11 May 1965

NAVERS NOTICE 1120

From: Chief of Naval Personnel  
To: Distribution List

Subj: Armed Forces Physicians' Appointment and Residency Consideration Program (Berry Plan) for Fiscal Year 1967; information concerning

Ref: (a) CRUITMAN, NAVPERS 15830

Encl: (1) DOD Information Bulletin (Berry Plan - 1965)  
(2) Copy NAVERS ltr to Navy allocated physicians

1. Purpose. To forward enclosures (1) and (2) for information and to implement procedures for processing Berry Plan physicians seeking appointment in the Medical Corps, Naval Reserve.

2. Discussion. The Armed Forces Physicians' Appointment and Residency Consideration Program is referred to by all Military Services as the Berry Plan. Enclosure (1) promulgated detailed information concerning the Fiscal Year 1967 Berry Plan. The following features of this program are particularly noteworthy:

a. The program is sponsored by the Department of Defense.

b. The principal aims of the program are:

(1) to provide a means for physicians liable for active duty to volunteer for a reserve commission in one of the Military Services and to be called to active duty at a mutually acceptable time, and

(2) to provide a system through which the Military Services may obtain from among these volunteers the general duty physicians and specialists required to meet projected active duty needs.

c. The program is available only to 1965 medical school graduates seeking reserve commissions for entry on active duty at one of the following, mutually acceptable times:

(1) immediately after internship (Post-internship duty),

(2) as late as 1 year after internship (Delayed duty), or

(3) after completion of residency training in specialties required by the Military Services (Deferment for Residency Training).

LESS ENCLOSURE (1)

A-77

EXHIBIT 2-4

BEST COPY AVAILABLE

d. Commencing with the Fiscal Year 1965 Berry Plan two distinct groups of physicians are selected for Deferment for Residency Training each year. Group #1 is selected by the Deputy Assistant Secretary of Defense (Health & Medical) and consists of applicants who will receive deferment to complete residency training and who will be brought to active duty thereafter to serve two years in their specialties. Group #2 is also selected by the Deputy Assistant Secretary of Defense (Health & Medical). Group #2 physicians, however, may or may not be called to active duty upon completion of their specialty training, depending upon the needs of the Services. Those Group #2 physicians who will be called to active duty will be notified as far in advance as possible and will serve in their specialties. Those Group #2 physicians who are not called to active duty will comprise a Ready Reserve pool of physicians who will be available for active duty in the event of a national emergency retaining Ready Reserve status for three years following completion of specialty training.

e. For the Fiscal Year 1966 Berry Plan three copies of the Report of Medical Examination, SF 88, and Report of Medical History, SF 89, annotated to indicate the applicant's acceptability for induction was forwarded to the applicant's Local Draft Board for use in the event a Special Call for physicians was placed. This did not, however, preclude the applicants being ordered to report for pre-induction processing subsequent to submitting an application for a commission as was intended, and the Deputy Assistant Secretary of Defense (Health & Medical) has directed the three services to initiate different procedures this year. On the day a physician is administered a physical examination in connection with his application for a reserve commission under the Berry Plan, the activity processing the application will send to the applicant's Local Draft Board a letter stating that the physical examination was administered but that a decision concerning the applicant's physical qualifications will not be available pending review of the Report of Medical Examination by the proper authority (The Chief, Bureau of Medicine and Surgery, for Navy applicants). The Chief of Naval Personnel will issue a Statement of Acceptability, DD Form 62, to the applicant's Local Draft Board following a decision on his physical qualifications. In those cases where the applicants decline to accept the commission when tendered, or withdraw prior to final action on the application, the Army Area Commander having cognizance over the area in which the physical examination was administered will be provided those documents from the application file required to complete a pre-induction file. The Chief of Naval Personnel will provide these documents to the Army Area Commanders. In those cases where the Berry Plan applicant was required to undergo pre-induction processing prior to submitting an application for a commission, the pre-induction file will be obtained from the Army Area Commander having cognizance over the area in which the processing was completed for use in connection with the application.

A-78



11 May 1965

3. Berry Plan Eligibility. Participants in the Military Senior Medical Student Programs or Military Internship Programs are not eligible. To be eligible for participation in the Berry Plan, all other physicians must:

a. Be 1965 graduates of medical schools which meet the criteria of the Council on Medical Education and Hospitals of the American Medical Association or possess unrestricted certification by the Education Council for Foreign Medical Graduates.

b. Be liable for 2 years of active duty military service.

4. Service Allocation. Each 1965 medical school graduate eligible for the Berry Plan was contacted by the Deputy Assistant Secretary of Defense (Health & Medical) in May 1965 and was given a copy of enclosure (1) and a Statement of Preference (SD Form 249) upon which to indicate a choice of Military Service and deferment desires. When the completed forms SD Form 249 have been returned to the Department of Defense (deadline 31 July 1965), each physician will be allocated to the Navy, Army, or Air Force as the sponsoring service. Enclosure (2) is the letter by which the Chief of Naval Personnel notifies physicians of their allocation to the Navy.

5. Application Schedule. For the Fiscal Year 1967 Berry Plan, the deadline by which all Berry Plan physicians must have submitted applications for reserve commissions is 15 September 1965. For Navy allocated physicians, the application will be interpreted as having been submitted when it has been placed in process in accordance with reference (a). Applications for appointment in the Naval Reserve from 1965 medical school graduates who are eligible for the Berry Plan but who have not been allocated to the Navy may not be processed until after 1 March 1966. After that date, all 1965 graduates may apply for reserve commissions in any of the services regardless of Berry Plan allocation or participation. This restrictive date does not apply to applications for appointment in the Medical Corps, Regular Navy, which may be processed at any time subsequent to completion of six months of internship.

6. Appointment and Active Duty. Any Berry Plan physician selected for appointment by a Military Service is required to execute the Oath of Office within 30 days after receipt of the appointment at the recruiting activity. The majority of selectees for Post-internship duty will be called in July or August 1966. Selectees for delayed duty will be called approximately July 1967. Selectees for Group #1 residency deferments will be called to active duty after completion of such training. Selectees for Group #2 residency deferments will be advised by the Chief, Bureau of Medicine and Surgery if their services on active duty will be required. Every effort will be made to adhere to an applicant's desire concerning the date of entry on active duty. However, if more physicians request active duty than can be called during a given period, preference will be given to those whose applications are first received.



7. Residency Deferment. Berry Plan physicians who request Deferment for Residency Training will be advised by the Deputy Assistant Secretary of Defense (Health & Medical) of their selection or non-selection for either Group #1 or Group #2 residency deferments.

8. Action

a. At the time of initial contact each applicant shall be advised that if he has been previously processed for pre-induction as a physician his pre-induction file will be obtained from the cognizant Army Area Commander for use in connection with his application for a commission in the Medical Corps, Naval Reserve. The following special procedures will be followed in the processing of the applications of those physicians who have been previously processed for pre-induction:

(1) Obtain the date and address of the Armed Forces Examining Station where the pre-induction processing was completed from the applicant and request the pre-induction file from the cognizant Army Area Commander by letter.

(2) Pending receipt of the pre-induction file processing of the application for a commission in the Medical Corps, Naval Reserve, will be held in abeyance.

(3) Upon receipt of the pre-induction file from the Army Area Commander the applicant shall be advised of the action that will be required on his part to complete his application for a commission. In all cases the Report of Medical Examination, SF 88, Report of Medical History, SF 89, Statement of Personal History, DD 398, and Loyalty Statement, DD 98, contained in the pre-induction file will be utilized in the processing of the application. In no case will an applicant be required to undergo an additional physical unless specifically requested by the Chief of Naval Personnel.

(4) A National Agency Check will be initiated in all cases with "BERRY PLAN" indicated on the Request for National Agency Check, OPNAV 5510-397.

(5) Indicate "BERRY PLAN" as the authority for application on the Application Control and Processing Record, NAVPERS 989.

(6) The Chief of Naval Personnel, Pers-B6232, shall be advised in all cases where the pre-induction file is not received from the Army Area Commander within a reasonable time.

b. Physicians who have not been previously processed for pre-induction as a physician will be processed for a commission in the Medical Corps, Naval Reserve in accordance with reference (a) except as follows:



11 May 1965

(1) Indicate "BERRY PLAN" on the National Agency Check Request (OPNAV 5510-397), on the Report of Medical Examination (SF 88), and as the authority for application on the Application Control and Processing Record (NAVPER 989).

(2) On the day the physical examination was administered, forward to the applicant's local Draft Board a letter stating that the examination was given in connection with an application for a commission in the Medical Corps, Naval Reserve, under the provisions of the Berry Plan but that a decision on the applicant's physical qualifications will not be available until after review of the Report of Physical Examination by the Chief, Bureau of Medicine and Surgery.

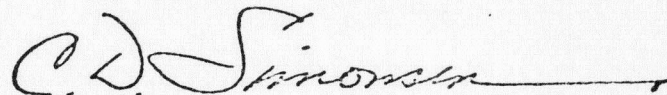
(3) Include applicant's Selective Service Number and the address of his local Draft Board in Item 73 of SF 88.

(4) Forward to the Chief of Naval Personnel, Pers-B6232, the residual file of all physicians who withdraw their applications prior to being tendered a commission.

(5) A Navy allocated physician presently commissioned in the reserve component of the Army, Air Force, or Public Health Service will not be processed unless he has obtained a contingent release from his parent service.

c. Officers in charge will insure completion and forwarding of the contract (Request and Agreement for Berry Plan applicants (NAVPER 4114)) required by reference (a).

9. Cancellation. This Notice is cancelled for record purposes on 30 April 1966.



C. D. SIMONSEN

By direction

## Distribution:

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NAVY JAG DIRECTIVE CON. NUMBER 1120.2  
DATE September 16, 1965

ASD(M)

## Department of Defense Instruction

SUBJECT Armed Forces Physicians' Appointment and Residency  
Consideration Program

- Refs.: (a) DoD Instruction 1120.2, "Armed Forces Reserve Medical Officer  
Commissioning and Residency Consideration Program,"  
July 7, 1955 (hereby cancelled)
- (b) DoD Instruction 1322.5, "Senior Medical Student Program  
Policy," February 12, 1957
- (c) Universal Military Training and Service Act, as amended,  
(50 U.S.C. App. 454(a))

### I. PURPOSE AND OBJECTIVE

- A. This Instruction prescribes a program, jointly sponsored by the Department of Defense and the Selective Service System, designed to fill the requirements of the Military Departments for physician specialists.
- B. It permits participating physicians to be brought to active duty in fulfillment of their obligation for military duty at mutually acceptable times by providing for the (1) appointment in the Reserve components of qualified participants in the program who are vulnerable for military service under the provisions of reference (c), and (2) deferment from military service of selected participants in order to permit them to undergo approved residency training in the various specialties required by the Armed Services.

### II. CANCELLATION

Reference (a) is hereby superseded and cancelled.

### III. APPLICABILITY AND SCOPE

- A. The provisions of this Instruction apply to the Military Departments.
- B. Senior medical students already selected by one of the Military Departments for participation in their Senior Medical Student Program (reference (b)) are not eligible for participation in this program.
- C. Physicians who are already commissioned in the Reserve of one of the Military Departments at the time they apply for participation in this program shall be eligible for allocation only to that department.

DO NOT WRITE IN THESE SPACES

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EXHIBIT 2-5



IV. PROGRAM PROCEDURES

A. The Deputy Assistant Secretary of Defense (Manpower - Health and Medical) will:

1. Determine, insofar as practicable, early in their internship year, whether or not physicians vulnerable for military service desire to accept a Reserve commission and receive consideration for deferment for essential residency training.
2. Allocate to the Military Departments for commissioning purposes physicians who indicate a desire for a Reserve commission. Such physicians will be allocated to the Military Department of their choice insofar as practicable.
3. Select during their internships those physicians who are vulnerable for military service, who will be considered for deferment for essential residency training. In making such selections, consideration will be given to the future needs of the Military Departments for physicians with partial or completed residency training in the various specialties.
4. Forward to the Director, Selective Service System, the names of the selected participants after they have been commissioned in the Reserve of one of the Military Departments, and request the deferment of such participants for the required specialty training. Such requests will be renewed annually.

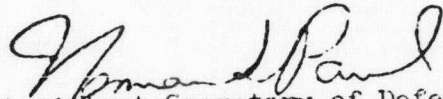
B. The Secretaries of the Military Departments will:

1. Offer allocated physicians the opportunity to apply for a Reserve commission and tender commissions to those who are found qualified.
2. Ascertain from allocated physicians who accept commissions their desires regarding time of entrance on active duty following completion of internships. Their desires in this regard will be adhered to insofar as the requirements of the Military Departments will permit.
3. After those allocated physicians who are selected for residency training have been commissioned in the Reserve, delay their entrance on active duty and forward their names to the Deputy Assistant Secretary of Defense (Manpower - Health and Medical). The names of those physicians in residency training will be forwarded annually.

1120.2  
Sept 16, 65

V. EFFECTIVE DATE AND IMPLEMENTATION

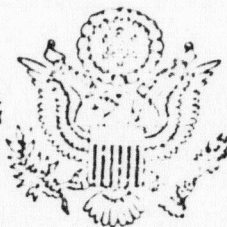
This Instruction becomes effective upon issuance. Each Military Department will forward three (3) copies of implementing documents to the Assistant Secretary of Defense (Manpower), within ninety (90) days of the effective date.

  
Assistant Secretary of Defense  
(Manpower)

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United States of America



DEPARTMENT OF THE NAVY

Washington, D.C., 23 June 1976

I hereby certify that the annexed pages constitute a true and accurate copy of Department of Defense Instruction 1205.1, dated 27 September 1960. Subject: Implementation of the Universal Military Training and Service Act with Respect to Medical and Dental Registrants; such Instruction being kept in the ordinary course of official business under my official supervision and in my official custody, on file in the Office of the Judge Advocate General, Navy Department, Washington, D.C.

David R. Spain

Assistant to the Judge Advocate General  
(Financial Management & Administration)  
(Official title)

OFFICE OF THE SECRETARY

I hereby certify that David R. Spain, who signed the foregoing certificate, was at the time of signing Assistant to the Judge Advocate General (Financial Management & Administration) and that full faith and credit should be given his certification such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this twenty-third day of June, one thousand nine hundred and seventy-six.

David L. Beale

Secretary of the Navy

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EXHIBIT Z-6



## Department of Defense Instruction

~~CONFIDENTIAL~~

**SUBJECT** Implementation of the Universal Military Training and Service Act  
with Respect to Medical and Dental Registrants

- Refs.: (a) DoD Instruction 1205.1, "Implementation of the Universal Military Training and Service Act with Respect to Medical, Dental and Allied Specialist Registrants" September 16, 1957 (hereby cancelled)
- (b) DoD Instruction 1120.2, "Armed Forces Reserve Medical Officer Commissioning and Residency Consideration Program"
- (c) DoD Directive 1120.3, "Report on Medical, Dental, and Allied Specialists, Estimated Monthly Strengths"
- (d) DoD Instruction 1120.5, "Armed Forces Reserve Dental Officer Commissioning Program"

### I. PURPOSE

The purpose of this instruction is to implement those provisions of the Universal Military Training and Service Act, as amended, and other pertinent laws and directives which relate to medical and dental specialist personnel registered thereunder who have a liability for training and service (hereinafter referred to as "medical and dental registrants") under the provisions of Section 4 of the Universal Military Training and Service Act.

### II. CANCELLATION

Reference (a) is cancelled.

### III. THE EXECUTIVE AGENT

- A. The Department of the Army is designated as the executive agent for the Department of Defense with respect to certain matters of personnel administration pertaining to medical and dental registrants who apply for commissions after receipt of induction notices.
- B. The following functions will be performed by the executive agent:
1. Determining acceptability of medical and dental registrants for military service in accordance with the policies contained in IV. and VI. below.

**DO NOT ATTACH**

**DO NOT REMOVE FROM BINDER**

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...the system regarding determination...  
...Such allocations will be made...  
...with representatives of the other military...  
...participating in the special draft call concerned...  
...of a failure to reach agreement during such...  
...at an Army area headquarters, the case in...  
...will be referred to the executive agent who will...  
...with the department concerned prior to resolution...  
...allocations due regard will be given to the military...  
...department in which the registrant may have had prior service...  
...to the choice of service if specified, and to effect an...  
...equitable distribution of registrants from the standpoint...  
...of physical and professional qualifications. The number of...  
...registrants in each category to be allocated to each of the...  
...services from a given special call will be based upon the...  
...number of such persons requisitioned for each service by the...  
...Department of Defense in that call.

#### PROFESSIONAL STANDARDS

- A. Medical. A medical registrant will be considered professionally acceptable if he is engaged in the ethical practice of medicine or is otherwise participating in appropriate professional activities and.
1. He is a graduate of a school of medicine approved by the American Medical Association, or,
  2. If a graduate of a foreign medical school, he presents evidence of:
    - (a) Permanent certification by the Educational Council for Foreign Medical Graduates, or
    - (b) Permanent and unrestricted licensure in a state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States.

Exceptions may be made to the foregoing policy if a registrant possesses exceptional professional qualifications of value to the Armed Forces.

B. Dental. A dental registrant will be considered professionally acceptable if he is engaged in the ethical practice of dentistry and--

1. He is a graduate of a dental school approved by the Council on Dental Education of the American Dental Association, or--
2. He is currently licensed to practice dentistry in a state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States.

Exceptions may be made to the foregoing policy insofar as engagement in the ethical practice of dentistry is concerned if a dental registrant's case is being considered within one year after graduation from an approved dental school or while he is undergoing postgraduate instruction.

V. MEDICAL FITNESS STANDARDS

- A. The nature of the duties expected of physicians and dentists is such that, although they may have physical defects or medical conditions which would ordinarily be cause for rejection for the various branches and services of the Armed Forces, they may be expected to perform appropriate military duties as physicians and dentists.
- B. The policy referred to in A., above, permits the evaluation of certain physicians and dentists, who would generally be classified as medically unacceptable because of physical findings such as absence of parts, static orthopedic defects, the requirement of maintenance medication, the static sequelae of arrested acute and chronic disease processes, defective visual and auditory acuity, and some active processes relatively asymptomatic or of which the symptoms are not essentially disabling. Evaluations will be made on an individual basis and special attention will be given to those in whom health factors may be affected by age.
- C. The medical fitness standards set forth herein are applicable both in determining the medical acceptability for military service of medical and dental registrants who are not yet commissioned or enlisted in a non-Regular component of the Armed Forces and in determining whether those persons who are commissioned or enlisted are qualified for active duty, except that no medical or dental registrant will be found acceptable for induction if he is, or has been, rejected for appointment as a Reserve medical or dental officer on the sole ground of physical disqualification.



- D. The name of any applicant for appointment as a Reserve officer in the Medical or Dental Corps in one of the Armed Forces who is under the age of 35 and has been rejected for a Reserve commission on the sole ground of physical disqualification will be furnished, together with one copy of the SF 89, to the executive agent named in paragraph III. A. for transmittal to the State Director of the Selective Service System. A determination by one of the Armed Forces that an applicant is disqualified solely for physical reasons shall be conclusive as to the other departments.

VI. MORAL STANDARDS

- A. A medical or dental registrant will be found not acceptable for military service if he has:

1. Been convicted by a civil court of any offense where total sentence, period of parole, probation, suspended sentence or any other form of civil restraint exceeds one year or of any offense punishable by death.
2. Had frequent difficulties with law enforcement agencies or has exhibited criminal tendencies, a history of anti-social behavior, alcoholism, drug addiction, or other traits of character which would render him unfit to associate with military personnel.
3. Previously been separated from one or more of the Armed Forces under other than honorable conditions or for the good of the service concerned.
4. Criminal charges filed and pending against him, alleging a violation of a state or federal statute.

VII. PROCESSING OF REQUIREMENTS

- A. The report, "Medical, Dental And Allied Specialists, Estimated Monthly Strengths" (DD H&M(Q) 130) (DD Forms 574 and 574-1) submitted by the military departments in accordance with Department of Defense Directive 1120.3 (Reference (c)) will, after processing within the Office of the Secretary of Defense, be referred to the Assistant Secretary of Defense (Health and Medical).

- B. The figures shown under column 2, of the report referred to in A., above, will be the number of registrants in the various professions to be requisitioned from the Selective Service System under the

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provisions of subsection 5(a), Universal Military Training and Service Act, as amended, for a particular military department. Any significant change in the number of personnel required by a military department from the Selective Service System occurring during the period between regular submission of the reports referred to in A., above, will be reported to the Assistant Secretary of Defense (Health and Medical) by memorandum stating the changes desired and the reasons therefor. Such reports will be rendered at least forty-five days in advance of the first of the month in which the call is to be effective.

- C. In making entries in column f of the report referred to above, the military departments are authorized to use an experience factor based upon previous deliveries by the Selective Service System. In no instance, however, will such action serve as a basis for exceeding authorizations.
- D. The Assistant Secretary of Defense (Health and Medical) will, after further coordinating the reports referred to in A., above, with the Assistant Secretary of Defense (Manpower, Personnel and Reserve), submit such reports to the Secretary of Defense for approval.
- E. The Assistant Secretary of Defense (Manpower, Personnel and Reserve) will place approved calls with the Selective Service System. Calls will be placed with the Selective Service System at such intervals as will permit medical and dental registrants who accept reserve commissions in lieu of induction to be called to duty normally not less than forty-five days and no more than 120 days following their induction dates.

#### VIII. COMMISSIONING OF MEDICAL AND DENTAL REGISTRANTS

- A. Qualified medical and dental registrants may be commissioned by a military department upon receipt of an application for such appointment as indicated in this section.
- B. An applicant for a commission in one service who under the provisions of Section III.E.3. has been allocated for commissioning purposes to another service may not be commissioned in the first service except upon the approval of the Assistant Secretary of Defense (Health and Medical) or upon the applicant's release by the latter service.

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... considered for induction and allocated to the service component and medical and dental students who are participants in the early commissioning programs conducted by the military departments, or who were originally commissioned as a result of completing a reserve officer training corps program and who accept appointment as medical or dental officers upon graduation, may apply for a commission at any time. In order to implement the Armed Forces Reserve Medical Officer Commissioning and Residency Consideration Program (Reference (b)) and the Armed Forces Reserve Dental Officer Commissioning Program (Reference (d)), applications from medical and dental registrants may not be accepted from individuals in the categories below until expiration of the indicated period of time:

1. Medical registrants who did not participate in the Armed Forces Reserve Medical Officer Commissioning and Residency Consideration Program may not apply prior to March 1 of the year following the registrant's graduation from medical school.
  2. Medical registrants who participated in the Armed Forces Reserve Medical Officer Commissioning and Residency Consideration Program may apply only to the military department to which allocated prior to March 1 of the year following the registrant's graduation from medical school.
  3. Dental registrants who did not participate in the Armed Forces Reserve Dental Officer Commissioning Program may not apply within the 4-month period following the registrant's graduation from dental school.
  4. Dental registrants who participated in the Armed Forces Reserve Dental Officer Commissioning Program may apply only to the military department to which allocated within the 4-month period following the registrant's graduation from dental school.
- D. A medical registrant who holds a commission in a Reserve component in one of the Armed Forces except those holding commissions in the federally recognized National Guard of the Army or Air Force will not be required to participate in Reserve training programs while he is:



1. Undergoing a one-year medical internship, or
  2. Undergoing residency training under Reference (b).
- E. Determination of rank.

1. Upon determination by the service concerned that they are qualified for a commission, medical and dental registrants will be appointed in the Army or the Air Force in grades as follows, based upon the number of years' service constructively credited under 2., below, unless they are eligible for higher grade under other provisions of law or directive.

<u>Years of Service</u>	<u>Grade</u>
Less than 7 years	First Lieutenant
7 or more but less than 14 years	Captain
14 or more but less than 21 years	Major
21 or more but less than 23 years	Lieutenant Colonel
*23 or more years	Colonel or Lieutenant Colonel as determined by the military department

2. Years of service for appointment purposes under 1, above, will be computed by crediting the registrant with a minimum of four years for graduation from medical or dental school and adding an amount equivalent to the number of years, months, and days in which he has been engaged in appropriate professional activities between the date of his graduation and date of appointment except that each year of professional experience in excess of 21 years will be given one-half credit in determining his years of service. In addition, a person who possesses degrees in both medicine and dentistry may, in exceptional circumstances when it is determined by the service concerned that the additional training and experience which he possesses is of value in the profession in which he is then participating, be awarded not more than three years' additional credit toward determination of his credit. Nothing in the foregoing will be construed to prevent a military department from awarding credit in excess of that provided in this paragraph to an individual who has prior military service or possesses other qualifications for which credit may be authorized under current law.

\*Persons who have achieved national prominence as authorities in their particular specialty may be appointed in the grade of Colonel.

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3. Medical and dental officers on active duty in the Army or Air Force in the grade of first lieutenant shall be promoted to the temporary grade of captain if otherwise qualified therefor on the day following the first anniversary of the date upon which graduated from medical or dental school, if not entitled to prior promotion under other provisions of law or regulations.

4. In determining the grade in which medical and dental officers of the Navy shall be appointed constructive service shall be computed, considering professional education, professional experience gained subsequent to graduation from medical or dental school while not on active duty, and professional experience gained while on active duty as a medical officer or dental officer, as follows:

Four years' constructive service shall be credited for professional education prior to graduation from a medical school or dental school. Professional experience gained during the first two years after such graduation shall be credited as constructive service on a day-for-day basis. Active duty professional experience gained subsequent to two years after such graduation shall also be credited on a day-for-day basis. In addition, constructive service for professional experience gained subsequent to two years after such graduation while not on active duty shall be credited according to the following table:

Non-Active Duty Professional  
Experience Subsequent to 2  
Years after Graduation

Constructive Service

0 - 8 years

3/4 of non-active duty  
professional experience

Over 8 years

6 years plus 6/7 non-active  
duty professional experience  
in excess of 8 years

Upon determination of constructive service, an applicant may be appointed in the same grade and with the same date of rank as a line officer who was originally appointed in the grade of ensign and has not lost numbers on the lineal list of the Navy, and who has, or is expected to have, on the date of appointment of the applicant, actual commissioned service equal to the constructive service of the applicant, provided that an applicant will not be appointed in the grade of captain with date of rank earlier than 1 July 1955. If there

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be no such line officer, the grade and the date of rank assigned the applicant shall be the same as that held by the line officer whose service is most nearly equal to but not less than the constructive service of the applicant. The line officer so determined shall be assigned as the running mate of the applicant when appointed and, if there be more than one such line officer, the most junior shall be assigned. If the running mate who is assigned to the applicant is on the promotion list to the next higher grade, the applicant shall be appointed in the lower grade and promoted when his running mate is promoted.

F. Oath of Office for Certain Non-citizens.

In the event that a non-declarant alien while being processed for a commission indicates that he does not desire to take the oath of allegiance prescribed by Section 1757 of the Revised Statutes, as amended, he may pursuant to subsection 5(a), Universal Military Training and Service Act, as amended, be administered the following oath of service and obedience:

"I \_\_\_\_\_, a citizen of \_\_\_\_\_, and without intention of surrendering such citizenship, having been appointed a \_\_\_\_\_, do solemnly swear (or affirm) that I will serve the United States against all their enemies whomsoever, and that I will honestly and faithfully discharge the duties of the office upon which I am about to enter; So Help Me God."

G. Appointment without Referral to a Board of Officers.

Pursuant to subsection 5(c), Universal Military Training and Service Act, as amended, any person who is otherwise qualified for appointment in a grade higher than major or lieutenant commander will be appointed in such grade without referral of his case to a board of officers convened by the Secretary of the service concerned.

IX. READJUSTMENT OF GRADES OF CERTAIN OFFICERS

- A. Any physician or dentist who is a member of a Reserve component will, upon being ordered to active duty, be reappointed or promoted to such higher grade as he is entitled to under the provisions of this instruction based upon the amount of his creditable service or professional experience computed to the time of entry on active duty.

NEW JCS DIRECTIVES CONTROL

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- ii. Any physician or dentist serving on active duty who has accrued any amount of professional experience which, were he being considered for appointment pursuant to Section VIII. E., above, would entitle him to a higher grade than that in which he is serving on active duty will, at the earliest practicable date, be appointed or promoted (if otherwise qualified) to such higher grade.

X. ORDERING COMMISSIONED PERSONNEL TO ACTIVE DUTY

- A. Any physician or dentist who is a member of a reserve component of one of the Armed Forces, who has not attained his 35th birthday, and who has not performed at least one year of active duty (other than for training), exclusive of periods spent in student programs prior to receipt of the appropriate professional degree or in intern training, may be ordered with or without his consent to active duty (other than for training) as an individual for a period of not more than 24 months pursuant to subsection 4(1), Universal Military Training and Service Act, as amended.
- B. Except for participants in the Armed Forces Reserve Medical Officer Commissioning and Residency Consideration Program and members of Ready Reserve units who are actively participating in unit training, persons subject to this section, in the event of a special draft call, will be ordered to active duty at the approximate time they would have been ordered for induction by the Selective Service System had they not been members of a reserve component of the Armed Forces.
- C. Those physicians and dentists who were members of the National Guard of the United States on 25 June 1950 and who have been members continuously since that date will not be called to active duty as individuals without their consent.
- D. Upon receipt of active duty orders any reserve officer and/or his employer may submit a request for a delay in entrance on active duty and/or exemption from active duty to a board authorized by the military department concerned to consider such cases. If such action results in disapproval, when the request is based on alleged community essentiality or hardship, the officer and/or his employer may submit an appeal to a higher authority within the military department concerned for a final determination of the matter.

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E. Any physician or dentist who meets the qualifications for a reserve commission in the respective military departments shall, so long as there is a need for his services, be afforded an opportunity, pursuant to subsection 4(1)(4), Universal Military Training and Service Act, as amended, to volunteer for a period of active duty for not less than 24 months.

F. Medical officers who have not completed a one-year internship and who are engaged in such training will not be placed on active duty without their consent prior to completion of such training.

XI. INTERSERVICE TRANSFER

A. Pursuant to Section 3, Public Law 779, 81st Congress, as amended, officers holding commissions in the medical services may be transferred between the Armed Services, with their consent.

B. Application.

1. Method. Persons desiring transfer from the medical service of one department to the medical service of another department will initiate a letter to that effect which will include the following information:

- (a) Applicant's last name, first name, and middle initial.
- (b) Service number.
- (c) Grade and corps.
- (d) Component (regular, reserve, etc.).
- (e) Organization to which assigned.
- (f) Years, months and days of active federal commissioned service.
- (g) Summary of prior interdepartmental transfer (if any).
- (h) Brief statement of professional qualifications.
- (i) Brief statement of reasons for requesting transfer.
- (j) Complete medical examination.



... Forwarding. The request for transfer will be forwarded to the department concerned through command channels and will be addressed as follows:

(a) To the Department of the Army--

The Adjutant General  
Department of the Army  
Washington 25, D. C.

(b) To the Department of the Navy--

Chief of Naval Personnel  
Washington 25, D. C.

(c) To the Department of the Air Force--

Headquarters  
United States Air Force  
Deputy Chief of Staff for Personnel  
Attention: Director of Military  
Personnel, AFIMP-1-R  
Washington 25, D. C.

3. All requests for transfer will be indorsed by both the parent and requested departments irrespective of their approval or disapproval in each case.

C. Action by Forwarding Indorsers. The immediate commander of the person requesting transfer will indicate in his forwarding indorsement approval or disapproval as the case may be. Whenever the indorsement is one of disapproval the reasons therefor will be stated. Each succeeding indorser will include in his indorsement any pertinent information deemed appropriate.

D. Initial Action by Headquarters of the Parent Department. Upon receipt of a request for transfer to the medical service of another department, the parent department will determine whether or not final approval or disapproval will be accorded thereon. After such determination is made an indorsement to that effect will be prepared and all correspondence forwarded to the department where transfer is desired.



E. Action by Headquarters of the Requested Department. Upon receipt of the request for transfer from the Headquarters of the parent department the Headquarters of the requested department will take the following action:

1. Requests for Transfer Approved by Parent Department. Determination will be made of the acceptability for transfer of the person concerned. Records of the parent department required for this action will be available upon request. After such determination is made, an indorsement to that effect will be prepared and all correspondence returned to the parent department.
2. Requests for Transfer Not Approved by Parent Department. These requests are forwarded to the requested department for informational purposes only. As soon as the requested department notes the action of the parent department, an indorsement to that effect will be prepared and all correspondence returned to the parent department.

F. Final Action by Headquarters of the Parent Department.

1. Requests for Transfer Approved by Both the Parent and Requested Departments. The Headquarters of the parent department will publish appropriate orders on those persons whose request for transfer is approved by both the parent and requested departments. All records or abstracts thereof pertaining to the officer transferred will be transferred to the gaining department.
2. Requests for Transfer Not Approved by Parent and/or Requested Department. The Headquarters of the parent department will return by appropriate indorsement through command channels the basic request for transfer to the person concerned.

XII. IMPLEMENTATION

Each military department shall take action to implement this instruction. Two copies of such implementing instructions shall be furnished to the Assistant Secretaries of Defense (Health and Medical) and (Manpower, Personnel and Reserve) within ninety (90) days of date of this instruction.

*Frank B. Barry*  
Assistant Secretary of Defense  
(Health and Medical)

*Charles A. ...*  
Assistant Secretary of Defense  
(Manpower, Personnel and Reserve).

*AB*



C. Code 4-182)

to be established in the Metro-  
politan Police force is  
to perform at such municipal or  
be authorized by the Commissioners  
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Police to detail, without additional  
members of the Metropolitan Police  
to participate in the activities of  
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The laws, one director for such band  
exceed the rate of compensation to  
the Metropolitan Police force is

85TH CONGRESS  
1st Session

HOUSE OF REPRESENTATIVES

REPORT  
No. 394

AMENDING THE UNIVERSAL MILITARY TRAINING AND  
SERVICE ACT WITH REGARD TO PERSONS IN MEDICAL,  
DENTAL AND ALLIED SPECIALIST CATEGORIES

MAY 8, 1957.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. KILDAY, from the Committee on Armed Services, submitted  
the following

REPORT

(To accompany H. R. 6548)

The Committee on Armed Services, to whom was referred the bill  
(H. R. 6548) to amend the Universal Military Training and Service  
Act, as amended, as regards persons in the medical, dental, and allied  
specialist categories, having considered the same, report favorably  
thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the  
following:

That section 4 (a) of the Universal Military Training and Service Act (50 U. S. C.  
App. 454 (a)) is amended by inserting the following new paragraph before the  
last paragraph thereof:

"No person in the medical, dental, and allied specialist categories shall be  
inducted under the provisions of this subsection if he applies or has applied for  
an appointment as a Reserve officer in one of the Armed Forces in any of such  
categories and is or has been rejected for such appointment on the sole ground  
of a physical disqualification."

SEC. 2. Section 4, Universal Military Training and Service Act, as amended  
(50 U. S. C. App. 454), is amended by adding the following new subsection at  
the end thereof:

"(d) (1) Subject to section 2 of this title, the President may order to active  
duty (other than for training), as defined in section 101 (22) of title 10, United  
States Code, for a period of not more than twenty-four consecutive months, with  
or without his consent, any member of a reserve component of the Armed Forces  
of the United States who is in a medical, dental, or allied specialist category,  
who has not attained the thirty-fifth anniversary of the date of his birth, and  
has not performed at least one year of active duty (other than for training).  
This subsection does not affect or limit the authority to order members of the  
reserve components to active duty contained in section 672 of title 10, United  
States Code.

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EXHIBIT Z-7

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AMENDING THE MILITARY TRAINING AND SERVICE ACT

"(2) For the purposes of computation of the periods of active duty (other than for training) referred to in subsection (1), credit shall be given for all periods of one day or more performed under competent orders, except that no credit shall be allowed for periods spent in student programs prior to receipt of the appropriate professional degree or in intern training.

"(3) Any person who is called or ordered to active duty (other than for training) from a reserve component of the Armed Forces of the United States after September 3, 1950, and thereafter serves on active duty (other than for training) as a medical, dental, or allied specialist for a period of twelve months or more shall, upon release from active duty or within six months thereafter, be afforded an opportunity to resign his commission from the reserve component of which he is a member unless he is otherwise obligated to serve on active military training and service in the Armed Forces or in training in a reserve component by law or contract.

"(4) Any physician or dentist who meets the qualifications for a Reserve commission in the respective military department shall, so long as there is a need for the services of such a physician or dentist, be afforded an opportunity to volunteer for a period of active duty (other than for training) of not less than twenty-four months. Any physician or dentist who so volunteers his service, and meets the qualifications for a Reserve commission shall be ordered to active duty (other than for training) for not less than twenty-four months, notwithstanding the grade or rank to which such physician or dentist is entitled.

Sec. 3. Section 4 (j), Universal Military Training and Service Act, as amended (50 U. S. C. App. 451 (j)), is reenacted with the following amendments:

(A) Strike out the words "as referred to in subsection (i)" in the first sentence; and

(B) Strike out "fifty-first" and insert "thirty-fifth" in the last sentence of the second paragraph.

Sec. 4. Section 5 (a) of the Universal Military Training and Service Act (50 U. S. C. App. 451 (a)) is amended by striking out the third proviso and inserting the following in place thereof: "Provided further, That nothing herein shall be construed to prohibit the President, under such rules and regulations as he may prescribe, from providing for the selection or induction of persons by age group or groups or from providing for the selection or induction of persons qualified in needed medical, dental, or allied specialist categories pursuant to requisitions submitted by the Secretary of Defense: And provided further, That, notwithstanding any other provision of law, except section 314 of the Immigration and Nationality Act (8 U. S. C. 1425), no person who is qualified in a needed medical, dental, or allied specialist category, and who is liable for induction under section 4 of this title, shall be held to be ineligible for appointment as a commissioned officer of an Armed Force of the United States on the sole ground that he is not a citizen of the United States or has not made a declaration of intent to become a citizen thereof, and any such person who is not a citizen of the United States and who is appointed as a commissioned officer may, in lieu of the oath prescribed by section 1757 of the Revised Statutes, as amended (5 U. S. C. 16), take such oath of service and obedience as the Secretary of Defense may prescribe."

Sec. 5. Section 5 of the Universal Military Training and Service Act (50 U. S. C. App. 455) is amended by adding the following new subsection at the end thereof:

"(c) Notwithstanding any other provision of law, any qualified person who—

"(1) is liable for induction; or

"(2) as a member of a Reserve component is ordered to active duty, as a physician, or dentist, or in an allied specialist category in the Armed Forces of the United States, shall, under regulations prescribed by the President, be appointed, reappointed, or promoted to such grade or rank as may be commensurate with his professional education, experience, or ability: Provided, That any person in a needed medical, dental, or allied specialist category who fails to qualify for, or who does not accept, a commission, or whose commission has been terminated, may be used in his professional capacity in an enlisted grade."

Sec. 6. Section 6 (b), Universal Military Training and Service Act, as amended (50 U. S. C. App. 456 (b)), is amended by adding at the end of paragraph (3) the following new clause:

"(E) periods of active duty performed by medical, dental, or allied specialists in student programs prior to receipt of the appropriate professional degree or in intern training."

Sec. 7. Section 6 (d), Universal Military Training and Service Act, as amended, (50 U. S. C. App. 456 (d)), is amended by adding the following new subsection at the end thereof:

AMENDING THE MILITARY TRAINING AND SERVICE ACT

"(4) It is the sense of the Congress that annual deferment from training and service of optometry students and premedical, pre-dental and pre-veterinary students at least equal to that of medical, pre-engineering, pre-law, pre-architecture colleges and universities in the United States by the Director herein."

Sec. 8. Section 7 of the Act of September 3, 1950, as amended, is amended to read as follows: "Sec. 7. This Act, except for section 3, of June 30, 1957."

Sec. 9. This Act takes effect July 1, 1957.

The purpose of the proposed legislation for the medical and dental health of the fiscal years.

The so-called doctors draft law was order to provide a means of obtaining physicians and dentists and allied specialists following the expansion of the services.

Under the doctors draft law, which requires physicians and dentists up to and including their parents. This was a special requirement required under the Universal Military Training and Service Act, those liable for service under the act.

Under the doctors draft law, the first priority consisted of physicians and dentists who had received Government training in completing their medical or dental education on active duty (exclusive of training) Priority II consisted of the same category to those who had served for more than one year on active duty. Priority III consisted of those who had not been in dental school but who had not been in dental education or who had not been in medical or dental school. Priority IV consisted of dentists under the age of 31.

This law was extended from time to time and liability for special registration was required.

The Congress recognized in 1950 that the special registration and induction, of physicians and dentists or inactivity. However, there was no alternative necessary to obtain physicians and dentists for the medical and dental needs of the armed forces.

Since that time the Congress has provided special pay for physicians and dentists in national constructive credit for longevity. This law, enacted in 1956, has already increasing the number of career physicians and dentists.

However, it is still necessary for the armed forces to obtain physicians and dentists on an involuntary basis.

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From where will these physicians and dentists come to meet the needs of the armed services?

In 1951 the Congress adopted an amendment to the Universal Military Training and Service Act which provided that anyone deferred on June 20, 1951, or thereafter deferred for any reasons, would remain liable for induction up to the age of 35. Thus, an individual born prior to June 20, 1925, would not be liable for induction since his liability for induction expired on June 25, 1951, when he attained the age of 26. However, those in a deferred status on that date, or thereafter deferred, became liable for service up to age 35. Thereafter, individuals were inducted into the armed services who were beyond the age of 26 on the basis of this provision of law. Following the termination of hostilities in Korea, the President, by Executive order, postponed the induction of individuals over the age of 26.

Under existing law, the President is authorized to order the induction of individuals by age group or age groups. However, he does not have the authority under existing law to induct individuals on the basis of their individual status, their profession, or their technical skills.

Since it is still necessary to obtain physicians through involuntary methods, the proposed legislation authorizes the President to make such calls under such rules and regulations as he may prescribe for the selection or induction of persons qualified in needed medical, dental or allied specialist categories pursuant to requisitions submitted by the Secretary of Defense.

Thus the President will be authorized to make calls from among medical and dental personnel even though these individuals are in age groups which, but for their profession, would not subject them to call except as it pertains to all individuals in those age groups.

This obviously is discriminatory legislation also, but the calls will be limited to individuals who were deferred on or after June 20, 1951, and will be further limited to those who are in needed medical, dental, or allied specialist categories.

Since individuals born prior to June 20, 1925, will not be affected, it is obvious that for the remainder of this calendar year, only physicians and dentists who are 32 years of age or less will be called. In calendar 1958 this group will be under the age of 33 and up to July 1, 1959, the termination date of the proposed legislation, as amended, will be under the age of 34. Therefore, no physician or dentist will be inducted or involuntarily ordered to active duty under the provisions of the proposed legislation, as amended, who exceeds the age of 34.

#### PROPOSED RATIO OF PHYSICIANS TO TROOP STRENGTH

The Department of Defense advised the Committee on Armed Services that the ratio of physicians to troop strength would be increased from 3 per thousand troop strength to 3.4 per thousand troop strength after July 1, 1957. This action was based upon recommendations submitted to the Department of Defense by the Health and Resources Advisory Committee, a committee consisting of civilian physicians and operating as an advisory committee to the President. On the basis of this ratio, the armed services would require 10,500 physicians annually for the next 2 years, which figure includes the residents serving on active duty but excludes interns. In order to

sustain this number of physicians on duty or induct some 2,400 physicians in fiscal 1959, who were deferred to date of 5,100 during the next 2 fiscal years.

However, after careful consideration the Services is of the opinion that at the present authorized ratio, the practical situation which exists requires physicians through involuntary means authority to order physicians to

In view of this practical situation, the Services have been provided by the health of the armed services recently enacted Department of Defense of the requirements for physicians. The committee is of the opinion that for the next 2 fiscal years should, on an end-strength basis, that this ratio will vary according to the separate needs of Defense ratio, in the opinion should, on an end-strength basis, levels. Variations from time to time in order to accommodate requests for volunteer physicians, and also to provide but the ratio objective should be thousand troop strength.

The committee is not unmindful of the General of the Army and the Assistant Secretary of Defense, concerning the assignment of additional medical personnel, the desirability of increased effort involving new problems of warfar problems, together with the effort pertaining strictly to military recognizing the desirability of more physicians to accomplish the committee must take the position postponed so long as it is necessary through the methods contemplated.

By adopting a ratio of 3 per thousand troops suggested by the Department will only require approximately 10,500 for the next 2 fiscal years, again counting interns.

The lowered ratio will reduce an involuntary basis from 2,400 in fiscal 1959 to 1,700 for a total of 4,100 as compared with the Department of Defense not detract from the urgency for

To meet the required intent of will be an available pool of physicians liable for service under the fiscal 1959 to meet the need for

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sustain this number of physicians it would be necessary to call to active duty or induct some 2,400 physicians in fiscal 1958 and 2,700 in fiscal 1959, who were deferred to obtain their medical educations, or a total of 5,100 during the next 2 fiscal years.

However, after careful consideration, the Committee on Armed Services is of the opinion that a ratio of 3 per thousand troop strength, the present authorized ratio, should not be exceeded, in view of the practical situation which exists concerning the need for obtaining physicians through voluntary means, or at least through the existence of authority to order physicians to active duty involuntarily.

In view of this practical fact, as well as the fact that the armed services have been provided with adequate medical care as evidenced by the health of the armed services and taking into consideration the recently enacted Dependent Medical Care Act which may relieve some of the requirements for physicians in the armed services, the committee is of the opinion that the ratio of 3 per thousand troop strength for the next 2 fiscal years should not be changed. It is realized, of course, that this ratio will vary among the services because of the peculiar needs of the separate services, but the overall Department of Defense ratio, in the opinion of the Committee on Armed Services, should, on an end-strength basis, remain at the present authorized levels. Variations from time to time will undoubtedly be necessary in order to accommodate requests for active duty from among volunteer physicians, and also to permit phased residency training programs, but the ratio objective should be geared to an end-strength of 3 per thousand troop strength.

The committee is not unmindful of the testimony of the Surgeon General of the Army and the Assistant Secretary of Defense, Health and Medicine, concerning many areas of military medicine, including the assignment of additional medical personnel to military attachés, the desirability of increased emphasis on purely military matters involving new problems of warfare, including evacuation and logistical problems, together with the effects of radiation and other matters pertaining strictly to military medicine. However, even though recognizing the desirability of permitting the armed services to have more physicians to accomplish these objectives, nevertheless the committee must take the position that these matters should be postponed so long as it is necessary to order physicians to active duty through the methods contemplated by the proposed legislation.

By adopting a ratio of 3 per thousand troop strength instead of the ratio suggested by the Department of Defense, the armed services will only require approximately 9,500 physicians during each of the next 2 fiscal years, again counting all of the residents but excluding interns.

The lowered ratio will reduce the required input of physicians on an involuntary basis from 2,400 in fiscal 1958 to 1,400, and from 2,700 in fiscal 1959 to 1,700, for a total requirement for the next 2 fiscal years of 4,100 as contrasted with the 5,100 originally contemplated by the Department of Defense. However, this reduced figure does not detract from the urgency for the proposed legislation.

To meet the required input of 1,400 physicians in fiscal 1958 there will be an available pool of approximately 3,542 physicians who will be liable for service under the terms of the proposed legislation. In fiscal 1959 to meet the need for 1,700 physicians there will be an

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available pool of 4,057 physicians under the terms of the proposed legislation.

The number of available physicians takes into consideration those who will be deferred because they are essential in their communities and those who will be physically disqualified. The number of physicians who will be ordered to active duty includes those who have been previously deferred to complete residency training, thus assuring the armed services of an adequate source of experienced physicians.

#### RATIO FOR DENTISTS

The requirements for dentists based upon a ratio of 2 per thousand troop strength, which has remained constant, indicates that in order to maintain an annual strength of approximately 6,000 dentists, 1,100 dentists will be needed in fiscal 1958 and 1,600 in fiscal 1959 through involuntary means. To meet the need for 1,100 dentists in 1958 there will be approximately 1,478 dentists available, and to meet the need for 1,600 dentists in fiscal 1959 there will be approximately 2,022 dentists available, under the terms of the proposed legislation.

#### OTHER PROVISIONS

Under the terms of the proposed legislation as submitted by the Department of Defense and approved by the Committee on Armed Services, a physician or dentist who is registered under the regular draft law may be commissioned even though he is not a citizen of the United States. This is a reiteration of existing law.

In addition, the proposed legislation, as submitted by the Department of Defense, contains a provision approved by the Committee on Armed Services requiring that the physician or dentist liable for induction or ordered to active duty as a member of a Reserve component, will be appointed, reappointed, or promoted to such grade or rank as may be commensurate with his professional education, experience, or ability. However, any person who fails to qualify for, or who does not accept a commission, or whose commission has been terminated may be used in his professional capacity in an enlisted grade. This likewise is a reiteration of existing law.

Physicians, dentists, and veterinarians who enter on active duty will be eligible for the special pay now provided for such individuals and this will include an individual who is inducted as a regular registrant and thereafter applies for and is granted a commission.

The provision for the interservice transfer of members of the medical and dental corps will be continued.

The provision of existing law which denies special pay for physicians, dentists and veterinarians for those inducted under the doctors draft law will be continued in effect so that no person inducted prior to July 1, 1957, as a special registrant under the doctors draft law, will be eligible for the special pay now provided for physicians, dentists, and veterinarians.

#### COMMITTEE AMENDMENT

The Committee on Armed Services has amended the proposal submitted by the Department of Defense in several important respects.

Under existing law which would not have been continued under the Department of Defense proposal as originally submitted to the com-

mittee, the Committee on Armed Services work of State to cooperate in the selection of physicians required for the armed services.

These committees for the purpose of appropriate dental, and respect to the laboratory needs of the Medical Advisory Committee the Committee on Medical Affairs amendment have been in effect.

Another amendment on July 1, 1957, Department of Defense the President in need of there is no and who are proposed legislation Committee on so that the Reserve duty commissions, wise advice apply to full duty for less who have Reserve component age of 35 who

The committee respect to the appointed, medical, dental age of 26. Under or appointed to serve obligation committee and to resign the individuals were of 26. This allied specialists obligated. dentists, and an officer in Reserve component national emergency

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the terms of the proposed

takes into consideration those essential in their communities. The number of physicians includes those who have residency training, thus assuring of experienced physicians.

# DENTISTS

Upon a ratio of 2 per thousand constant, indicates that in order approximately 6,000 dentists, 1,100 and 1,000 in fiscal 1959 through 1960 or 1,100 dentists in 1958 there available, and to meet the need there will be approximately 2,022 of the proposed legislation.

# PROVISIONS

legislation as submitted by the Committee on Armed Services, registered under the regular provisions, though he is not a citizen of the United States, as provided in existing law.

as submitted by the Department of Defense, approved by the Committee on Armed Services, a physician or dentist liable for induction into a Reserve component, promoted to such grade or rank as may be required, on the basis of professional education, experience, or ability to qualify for, or who does not have a commission has been terminated in an enlisted grade. This

provisions who enter on active duty now provided for such individuals who is inducted as a regular registered and granted a commission.

transfer of members of the medical service.

denies special pay for physicians, inducted under the doctors draft law. No person inducted prior to July 1, 1957, under the doctors draft law, will be provided for physicians, dentists, and

# AMENDMENT

has amended the proposal submitted in several important respects. The provisions have been continued under the provisions originally submitted to the com-

mittee, the President was directed to establish a National Advisory Committee to advise the Selective Service System and coordinate the work of State and local volunteer advisory committees established to cooperate with the National Advisory Committee with respect to the selection of needed medical, dental, and allied specialist categories required for service in the armed services.

These committees make determinations with respect to persons in residency training programs who shall be recommended for deferment for the purpose of completing their residency programs and also make appropriate recommendations with respect to the faculties of medical, dental, and allied specialist schools, schools of public health, and with respect to physicians, dentists and veterinarians engaged in essential laboratory and clinical research, having due regard to the respective needs of the armed forces and the civilian population. The American Medical Association strongly recommended that the National Advisory Committee and the local and State committees be continued and the Committee on Armed Services concurs in the views of the American Medical Association. Therefore, the proposed legislation contains an amendment which will continue these committees in effect as they have been in the past.

Another provision now contained in existing law which will expire on July 1, 1957, and which was not originally recommended by the Department of Defense for continuation, deals with the authority of the President to involuntarily order Reserve officers to active duty in needed medical, dental, and allied specialist categories. Since there is no provision of law under which individuals, who apply for and who are granted commissions under the provisions of the proposed legislation, may be involuntarily ordered to active duty, the Committee on Armed Services has amended the proposed legislation so that the President will have the authority to involuntarily order to active duty individuals in these categories who obtain Reserve commissions, thus avoiding any legal complications that may otherwise arise without this specific authority. The amendment will only apply to individuals under the age of 35 who have served on active duty for less than 1 year, thus providing ample protection for those who have completed their active service and who have retained their Reserve commissions, and will also protect those who are over the age of 35 who prefer to retain their Reserve commissions.

The committee has also amended the proposed legislation with respect to the termination of commissions of those individuals who are appointed, inducted, or enlisted in the armed services in needed medical, dental, or allied specialist categories when they are over the age of 26. Under existing law, no person who is inducted, enlisted, or appointed in the armed services beyond the age of 26 incurs a Reserve obligation. The proposed legislation, therefore, contains a committee amendment which affords such individuals an opportunity to resign their commissions from the Reserve components if such individuals were appointed, enlisted, or inducted after attaining the age of 26. This provision will assure these physicians and dentists and allied specialists the right to resign their commissions unless otherwise obligated. Reserve commissions are only granted to physicians, dentists, and allied specialists on an indefinite basis and, therefore, an officer who does not resign his commission will, as a member of a Reserve component, be liable to call to active duty in time of war or national emergency as provided under existing law.

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As previously stated, the attractiveness of a career in the medical or dental corps of the respective services has increased considerably in the past several months. The number of physicians and dentists who have accepted regular commissions has shown a marked increase so that today we have in excess of 4,000 career physicians serving on active duty in the armed services. This figure is expected to increase to 4,600 in fiscal 1958 and in excess of 5,000 by the end of fiscal 1959. However, this will still only furnish approximately one-half of the required number of physicians to provide for the medical needs of the armed services. The increase in the number of career physicians on active duty, however, has made it possible to eliminate entirely the doctors draft law as well as the special registration feature of the doctors draft law so that under the terms of the proposed legislation only those individuals who are otherwise liable under the Universal Military Training and Service Act as regular registrants will be liable for service. Statistically, the situation is approximately the same for dentists.

The committee also amended the proposed legislation by reiterating that portion of existing law, which would otherwise expire on July 1, 1957, which declares that it is the sense of Congress that the President shall defer a sufficient number of medical, dental and allied specialist category students, as well as preprofessional school students, to maintain the levels in existence in 1950.

The Department of Defense concurs in the amendments adopted by the Committee on Armed Services.

## AMENDING THE MILITARY TR

**The Committee on Armed Services**  
ment of the proposed legislation. The  
American Medical Association, the  
Association of American Medical  
Association, and the National Med.  
proposed legislation, as amended, the  
ment of Defense, and there is no  
Budget as indicated by the following:

DEAR MR. SPEAKER: There is proposed legislation to amend the Service Act, as amended, as regards allied specialist categories.

This proposal is a part of the Departmental Budget for 1957, and it has been approved by the Budget. The Department of the Interior is a representative of the Department of the Interior, and it is recommended that this proposal be approved.

PURPOSE OF THE

The purpose of this proposed legislation is to amend the Military Training and Service Act to permit the President to issue special calls for physicians and other specialists for duty in the Armed Forces. This is the so-called Doctor Draft Act, which is presently pending. This legislation if enacted will place a new category of personnel to be made free of the selective service law and will make them liable for induction under the new law.

The proposed legislation also contains provisions for the appointment of physicians, dentists, and allied specialists in the United States, or who have not made citizens, except for the provisions of the Nationality Act (66 Stat. 163), in lieu of the oath prescribed, take such oath as the Secretary of Defense may require.

The proposed legislation also covers the Universal Military Training and physicians, dentists, or allied specialists ineligible for commissions or who cannot be used in their professional capacity.

The proposed legislation would fix the expiration of the current Doctor D.

The Department of Defense has more than 100,000 personnel in the Army, Navy, and Air Force and a large number of well-qualified physicians to meet their requirements.

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The Committee on Armed Services strongly recommends the enactment of the proposed legislation. Testimony was received from the American Medical Association, the American Dental Association, Association of American Medical Colleges, American Optometric Association, and the National Medical Veterans Association. The proposed legislation, as amended, has been approved by the Department of Defense, and there is no objection from the Bureau of the Budget as indicated by the following attached letter:

MARCH 28, 1957.

HON SAM RAYBURN,

*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is forwarded herewith a draft of proposed legislation to amend the Universal Military Training and Service Act, as amended, as regards persons in the medical, dental, and allied specialist categories.

This proposal is a part of the Department of Defense legislative program for 1957, and it has been approved by the Bureau of the Budget. The Department of the Army has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

#### PURPOSE OF THE LEGISLATION

The purpose of this proposed legislation is to amend the Universal Military Training and Service Act to provide authority for the President to issue special calls for physicians and dentists and allied specialists for duty in the Armed Forces in lieu of calls under the so-called Doctor Draft Act, which is scheduled to expire on July 1, 1957. This legislation if enacted will permit special calls for this category of personnel to be made from those persons who are otherwise liable for induction under the regular draft.

The proposed legislation also continues the provision that physicians, dentists, and allied specialists who are not citizens of the United States, or who have not made a declaration of intent to become citizens, except for the provisions of section 314 of the Immigration and Nationality Act (66 Stat. 163, 241), will not be ineligible for appointment as commissioned officers by reason of that fact and may, in lieu of the oath prescribed, take such oath of service and obedience as the Secretary of Defense may prescribe.

The proposed legislation also continues the current provisions of the Universal Military Training and Service Act which permits needed physicians, dentists, or allied specialists, who refuse or who are ineligible for commissions or whose commissions are terminated, to be used in their professional capacity in an enlisted grade.

The proposed legislation would take effect July 1, 1957, upon the expiration of the current Doctor Draft Act.

The Department of Defense believes that this legislation is essential if the Army, Navy, and Air Force are to continue to maintain sufficient numbers of well-qualified physicians, dentists, and allied specialists to meet their requirements.

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10 AMENDING THE MILITARY TRAINING AND SERVICE ACT

COST AND BUDGET DATA

No additional expense will result from the enactment of this legislation.

Sincerely yours,

WILBER M. BRUCKER,  
Secretary of the Army.

SECTIONAL ANALYSIS

Section 1 amends section 4 (a), Universal Military Training and Service Act (50 U. S. C. App. 454 (a)) to provide that no person in the medical, dental, and allied specialist categories will be inducted into the Armed Forces if he is or has been rejected for appointment as a Reserve officer in any of such categories in one of the Armed Forces on the sole ground of a physical disqualification.

Section 2 amends section 4, Universal Military Training and Service Act (50 U. S. C. App. 454) by adding a new subsection (1) to provide that:

(1) The President may order to active duty (other than for training) for a period of not more than 24 consecutive months any Reserve officer in the medical, dental, or allied specialist category who is under the age of 35 years and has not served on active duty (other than for training) for a period of at least 1 year.

(2) In computing periods of active duty, all periods of active duty of 1 day or more shall be counted except that no credit shall be allowed for periods spent in student programs prior to receipt of the professional degree or while in intern training.

(3) Reserve officers called or ordered to active duty after September 5, 1950, who serve as a medical, dental, or allied specialist for 12 months or more are afforded the opportunity to resign their Reserve commission at the time of release from active duty or within 6 months thereafter unless such officer has a Reserve obligation by law or contract.

(4) Any physician or dentist who qualifies for a Reserve commission may, so long as there is a need for this services, volunteer for not less than 2 years' active duty, and shall be ordered to active duty notwithstanding the grade to which he is entitled.

Section 3 reenacts section 4 (j), Universal Military Training and Service Act, as amended (50 U. S. C. App. 454 (j)), with regard to the continuation of the National Advisory Committee and local and State advisory committees but amends it to delete the reference to section 4 (i) and to change the reference to the availability of medical, dental and allied specialist personnel who have attained a certain age from age 51 to age 35.

This provision thus reenacts section 4 (j) of the Universal Military Training and Service Act, as amended, which authorized the appointment of National, State and local medical advisory committees, and thus assures that their advice on the selection of persons in needed medical, dental and allied specialist categories will continue to be available to the Selective Service System in the same manner as it has been in the past in connection with the administration of the expiring doctors' draft law.

AMENDING THE MILITARY TRAINING AND SERVICE ACT

Section 4 amends section 5 (a) of the Universal Military Training and Service Act (50 U. S. C. App. 455 (a)) to provide that the President may prescribe, to provide for the service of persons who are qualified in needed medical, dental, or allied specialist categories, to provide further that except as provided in section 5 (b) of the Immigration and Nationality Act (8 U. S. C. 1452 (b)) a person who is qualified in a needed medical, dental, or allied specialist category and who is liable for induction, will be considered a commissioned officer on the sole ground of a physical disqualification or declarant and that any such person may be inducted into the service and obedience as prescribed in section 5 (b) of the Immigration and Nationality Act (8 U. S. C. 1452 (b)).

Section 5 amends section 5 of the Universal Military Training and Service Act (50 U. S. C. App. 455) to provide that any qualified person who is liable for induction into the Reserve component is ordered to active duty, or in an allied specialist category, or in an allied specialist category of the United States will, under regulation prescribed by the President, be appointed, reappointed, or promoted with his professional education, experience, and other qualifications. This section provides that if such person is not so appointed, a commission, or if his commission is not so renewed, he shall be considered in his professional capacity in the United States.

Section 6 amends section 6 of the Universal Military Training and Service Act, as amended (50 U. S. C. App. 456) to provide that for the purpose of determining the credit to be included in computing veterans' service for periods of active duty performed in student programs prior to receipt of the professional degree or while in intern training.

Section 7 amends section 6 (d) of the Universal Military Training and Service Act, as amended, to provide that the President shall continue to prescribe the levels of training for students, equal to the levels in effect in 1950.

Section 8 provides that the act of June 30, 1950, as amended, except for sections 3 and 4, shall remain in effect until the close of June 30, 1957.

Section 9 provides that the act of June 30, 1950, as amended, shall remain in effect until July 1, 1959.

CHANGES IN REVENUE

In compliance with clause 3 of rule 1 of the Rules of the House of Representatives, there is hereby made by the printer the following changes in the bill, which are printed in italics, excepting in the case of changes in the text of the bill:

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AMENDING THE MILITARY TRAINING AND SERVICE ACT . 11

Section 4 amends section 5 (a) of the Universal Military Training and Service Act (50 U. S. C. App. 455 (a)) by changing the present provision to authorize the President, under such regulations as he may prescribe, to provide for the selection or induction of persons in needed medical, dental, or allied specialist categories, and to provide further that except as provided in section 314 of the Nationality and Nationality Act (5 U. S. C. 1425), no person who is in a needed medical, dental, or allied specialist category, and who is liable for induction, will be held ineligible for appointment as a commissioned officer on the sole ground that he is not a citizen of the United States and that any such noncitizen who is appointed may, in taking the oath prescribed in section 1757 R. S., take an oath of loyalty and obedience as prescribed by the Secretary of Defense.

Section 5 amends section 5 of the Universal Military Training and Service Act (50 U. S. C. App. 455) by adding subsection (c) to provide that any qualified person who is liable for induction or as a member of the reserve component is ordered to active duty as a physician, dentist, or in an allied specialist category in the Armed Forces of the United States will, under regulations prescribed by the President, be appointed, reappointed, or promoted to grade or rank commensurate with his professional education, experience, or ability. Further, this section provides that if such person fails to qualify for, or does not receive, a commission, or if his commission is terminated, he may be continued in his professional capacity in an enlisted grade.

Section 6 amends section 6 (b), Universal Military Training and Service Act, as amended (50 U. S. C. App. 455 (b)) to provide that, for the purpose of determining the periods of active duty to be included in computing veterans' exemptions, no credit will be allowed for periods of active duty performed by medical, dental, or allied specialists in student programs prior to receipt of the appropriate professional degree or in intern training.

Section 7 amends section 6 (d) of the Universal Military Training and Service Act, as amended, to reiterate the sense of the Congress that the President shall continue to provide for the deferment of premedical, premedical, preveterinary, and preosteopathic students, equal to the levels in attendance at universities and colleges.

Section 8 provides that the act of September 9, 1950 (64 Stat. 826), except for sections 3 and 5 thereof, terminates at the end of June 30, 1957.

Section 9 provides that the act takes effect July 1, 1947, and terminates July 1, 1959.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed changes in existing law by the proposal as follows (existing law proposed to be omitted is in black brackets, new matter amending existing law is in italics, existing law in which no change is proposed is in

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**TITLE I—TO AMEND THE UNIVERSAL MILITARY TRAINING AND SERVICE ACT, AS AMENDED, AS REGARDS PERSONS IN THE MEDICAL, DENTAL, AND ALLIED SPECIALIST CATEGORIES**

**SEC. 4 (a). TRAINING AND SERVICE IN GENERAL.**—Except as otherwise provided in this title, every male citizen of the United States and every male alien admitted for permanent residence, who is between the ages of 18 years and 6 months and 26 years, at the time fixed for his registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6 (h) of this title, shall be liable for training and service in the Armed Forces of the United States: *Provided*, That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: *Provided further*, That any male alien who is between the ages of 18 years and 6 months and 26 years, at the time fixed for registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6 (h) of this title, who has remained in the United States in a status other than that of a permanent resident for a period exceeding one year (other than an alien exempted from registration under this title and regulations prescribed thereunder) shall be liable for training and service in the Armed Forces of the United States, except that any such alien shall be relieved from liability for training and service under this title if, prior to his induction into the Armed Forces he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any alien who makes such application shall thereafter be debarred from becoming a citizen of the United States. The President is authorized, from time to time, whether or not a state of war exists, to select and induct into the Armed Forces of the United States for training and service in the manner provided in this title (including but not limited to selection and induction by age group or age groups) such number of persons as may be required to provide and maintain the strength of the Armed Forces.

At such time as the period of active service in the Armed Forces required under this title of persons who have not attained the nineteenth anniversary of the day of their birth has been reduced or eliminated pursuant to the provisions of section 4 (k) of this title, and except as otherwise provided in this title, every male citizen of the United States who is required to register under this title and who has not attained the nineteenth anniversary of the day of his birth on the date such period of active service is reduced or eliminated, or who is otherwise liable as provided in section 6 (h) of this title, and every male alien admitted for permanent residence who is required to register under this title and who has not attained the nineteenth anniversary of the day of his birth on the date such period of active service is reduced or eliminated, or who is otherwise liable as provided in section 6 (h) of this title, shall be liable for training in the National Security Training Corps: *Provided*, That any male alien who is required to register under the provisions of this title and who has not reached the nineteenth anniversary of the date of his birth on the date such period

of active service is reduced or eliminated, shall be liable for training as provided in section 6 (h) of this title in a status other than the National Security Training Corps exceeding one year shall be liable for training under this title if not in the National Security Training Corps he has such liability in the manner prescribed by rules and regulations prescribed by the President: *Provided*, That any such application shall be made by a citizen of the United States: *Provided*, That under the provisions of section 4 (a) of this title, liability for induction into the Armed Forces by reason of having exceeded the period of such deferment. The President is authorized, whether or not a state of war exists, to select and induct into the National Security Training Corps such number of persons as may be required to provide and maintain the strength of the Armed Forces.

No person shall be inducted into the Armed Forces and service or shall be inducted into the National Security Training Corps under this title, except that including his physical and mental condition as determined under standards prescribed by the President: *Provided*, That the minimum standards established pursuant to this section shall be applied to persons inducted into the Armed Forces by any 1945: *Provided further*, That the Armed Forces Qualification Test shall be of 10 points.

No persons shall be inducted into the Armed Forces unless adequate provision shall have been made for housing, facilities, water supplies, health care, and hospital accommodation determined by the Secretary of Defense to be essential to the public interest.

The persons inducted into the Armed Forces under this title shall be inducted into the Armed Forces. Persons inducted into the Armed Forces pursuant to this title shall be inducted into the United States: persons inducted into the United States pursuant to this title shall be inducted into the United States Navy, United States Coast Guard, United States Air Force, into the air forces of the United States, or into the air forces of the United States deemed to be members of the United States.

Every person inducted into the Armed Forces under the authority of this section shall be inducted into the Armed Forces following his induction, by the President, for service in the armed forces of the United States for a period of not less than four months' period, he shall be inducted on land outside the United States (including the Canal Zone) or



of active service is reduced or eliminated, or who is otherwise liable as provided in section 6 (h) of this title, who has remained in the United States in a status other than that of a permanent resident for a period exceeding one year shall be liable for training in the National Security Training Corps except that any such alien shall be relieved from such training under this title if prior to his induction into the National Security Training Corps he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any alien who makes such application shall thereafter be debarred from becoming a citizen of the United States: *Provided further*, That persons deferred under the provisions of section 6 of this title shall not be relieved from liability for induction into the National Security Training Corps solely by reason of having exceeded the age of 19 years during the period of such deferment. The President is authorized, from time to time, whether or not a state of war exists, to select and induct for training in the National Security Training Corps as hereinafter provided such number of persons as may be required to further the purposes of this title.

No person shall be inducted into the Armed Forces for training and service or shall be inducted for training in the National Security Training Corps under this title until his acceptability in all respects, including his physical and mental fitness, has been satisfactorily determined under standards prescribed by the Secretary of Defense: *Provided*, That the minimum standards for physical acceptability established pursuant to this subsection shall not be higher than those applied to persons inducted between the ages of 18 and 26 in January 1945: *Provided further*, That the passing requirement for the Armed Forces Qualification Test shall be fixed at a percentile score of 10 points.

No persons shall be inducted for such training and service until adequate provision shall have been made for such shelter, sanitary facilities, water supplies, heating and lighting arrangements, medical care, and hospital accommodations for such persons as may be determined by the Secretary of Defense or the Secretary of the Treasury to be essential to the public and personal health.

The persons inducted into the Armed Forces for training and service under this title shall be assigned to stations or units of such forces. Persons inducted into the land forces of the United States pursuant to this title shall be deemed to be members of the Army of the United States; persons inducted into the naval forces of the United States pursuant to this title shall be deemed to be members of the United States Navy or United States Marine Corps or the United States Coast Guard, as appropriate; and persons inducted into the air forces of the United States pursuant to this title shall be deemed to be members of the Air Force of the United States.

Every person inducted into the Armed Forces pursuant to the authority of this subsection after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act shall, following his induction, be given full and adequate military training for service in the armed force into which he is inducted for a period of not less than four months, and no such person shall, during this four months' period, be assigned for duty at any installation located on land outside the United States, its Territories and possessions (including the Canal Zone); and no other member of the Armed Forces

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tions submitted by the Secretary of  
notwithstanding any other provisions  
Immigration and Nationality Act  
qualified in a needed manner, and  
who is liable for induction, under  
ineligible for any treatment as a co-  
of the United States on the side of the  
States or has not made a declaration  
and any such person who is not a  
appointed as a commissioned agent  
by section 1757 of the Public Law  
take such oath of service as may be  
prescribe: And provided further,

(1) no local board shall service in the Armed Forces has not attained the age of jurisdiction of such local board are deemed by such local board to meet a call for military induction; and

(2) no local board shall  
service in the Armed Forces  
has not attained the age of  
the jurisdiction of the local  
days older, (ii) has not  
deemed by the local board

Sec. 5 (c). Notwithstanding any  
person who—

(1) is liable for its location;  
(2) as a member of a reserve  
as a physician, or dentist, or in  
Armed Forces of the United States  
by the President, be appointed, re-  
or rank as may be conferred, on  
experience, or ability: Provided, That  
dentist, or allied specialist category  
not accept, a commission, or rank  
be used in his professional practice.

Section 7 of the Act of September 19, 1930, as amended, is amended to read:

"Sec. 7. This Act, or any part thereof, shall not apply to any person who has been convicted of a crime under the laws of the United States or of any State, Territory, or Possession, or of any foreign country, after the close of June 30, 1937."

*This Act takes effect July 1, 1901.*

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submitted by the Secretary of Defense: And provided further, That, notwithstanding any other provision of law, except section 314 of the Immigration and Nationality Act (8 U. S. C. 1425), no person who is qualified in a needed medical, dental, or allied specialist category, and who is liable for induction under section 4 of this title, shall be held to be ineligible for appointment as a commissioned officer of an Armed Force of the United States on the sole ground that he is not a citizen of the United States or has not made a declaration of intent to become a citizen thereof, if any such person who is not a citizen of the United States and who is appointed as a commissioned officer may, in lieu of the oath prescribed by section 1157 of the Revised Statutes, as amended (5 U. S. C. 16), take such oath of service and obedience as the Secretary of Defense may prescribe: And provided further, That—

(1) no local board shall order for induction for training and service in the Armed Forces of the United States any person who has not attained the age of nineteen unless there is not within the jurisdiction of such local board a sufficient number of persons who are deemed by such local board to be available for induction and who have attained the age of nineteen to enable such local board to meet a call for men which it has been ordered to furnish for induction; and

(2) no local board shall order for induction for training and service in the Armed Forces of the United States any person who has not attained the age of nineteen, if there is any person within the jurisdiction of such local board who (i) is at least as ninety days older, (ii) has not attained the age of nineteen, and (iii) is deemed by the local board to be available for induction.

Sec. 5 (c). Notwithstanding any other provision of law, any qualified person who—

(1) is liable for induction, or

(2) as a member of a reserve component is ordered to active duty, as a physician, or dentist, or in an allied specialist category in the Armed Forces of the United States, shall, under regulations prescribed by the President, be appointed, reappointed, or promoted to such grade or rank as may be commensurate with his professional education, experience, or ability: Provided, That any person in a needed medical, dental, or allied specialist category who fails to qualify for, or who does not accept, a commission, or whose commission has been terminated, may continue in his professional capacity in an enlisted grade.

Section 7 of the Act of September 9, 1950, chapter 589 (64 Stat. 825), is amended to read as follows:

7. This Act, except for section 3 and section 5, terminates at the end of June 30, 1957. This Act takes effect July 1, 1957.